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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.C. et al.,

Defendants and Appellants.

E054394

(Super.Ct.Nos. J227481, J227483  
& J228862)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J.  
Schneider, Jr., Judge. Affirmed.

Maryann M. Milcetic, under appointment by the Court of Appeal, for Defendant  
and Appellant C.C.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and  
Appellant T.A.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,  
for Plaintiff and Respondent

Mother and father appeal from a juvenile court order terminating their parental rights to three children, K.C., N.A., and S.A.<sup>1</sup> These children, as well as two other children, were declared dependents due to domestic violence and drug abuse by both parents. When the parents failed to reunify within the statutory time frames, three of the children were referred for a hearing pursuant to Welfare and Institutions Code<sup>2</sup> section 366.26, to terminate parental rights. At that hearing, both parents argued that the beneficial parent-child relationship exception applied, making termination of parental rights detrimental to the children. The court found the evidence of a parental bond did not outweigh the children's need for permanency and terminated parental rights. Both parents appeal.

On appeal, mother argues for reversal on the same ground urged in the trial court. Father joins mother's argument. We affirm.

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<sup>1</sup> The parents have two other children who are not subjects of this appeal. Father is not related to K.C., whose own biological father did not appeal. Thus, mother appeals from the order respecting three minors, K.C., and K.C.'s half siblings N.A., and S.A.; father's appeal concerns only N.A. and S.A.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

## BACKGROUND

On May 31, 2009, the San Bernardino Child and Adult Abuse Hotline contacted the San Bernardino Department of Children and Family Services (CFS) regarding three children, K.C. (then age four), B.B.<sup>3</sup> (then age one), and N.A. (then age 10 months), after the parents were involved in a physically violent altercation that sent mother, who was seven months pregnant with her fourth child, to the emergency room, and resulted in father's incarceration for domestic violence and being under the influence of drugs. Mother reported that father had hit and kicked her in a struggle over the 10-month-old N.A.

Mother refused treatment at the hospital, but she admitted to using methamphetamine. She was unable to provide the accurate birthdates of her children. Father admitted to being under the influence of marijuana and using methamphetamine. Mother's teenage sister informed the sheriff's deputy who responded to the 911 call regarding the incident that mother also used heroin.

CFS filed a dependency petition alleging neglect (§ 300, subd. (b)) in that the parents failed to protect or provide regular care for the children due to domestic violence in the home and the parents' use of illegal drugs, and that father made no provision for

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<sup>3</sup> "B.B." stands for "Baby Boy," the name by which the child was referred in the trial court proceedings due to the lack of a name on his birth certificate. He was also called T.A. For continuity, we will refer to him as B.B.

support due to his incarceration. (§ 300, subd. (g).) The children were detained. On August 12, 2009, the children were placed in the home of their maternal grandmother.

On August 31, 2009, the court conducted the jurisdiction hearing. The court made true findings as to all of the allegations and found the children came within the provisions of section 300, subdivisions (b) and (g). The court removed the children from the parents' custody and maintained them in the home of their maternal grandmother. The court also ordered the parents to participate in reunification services.

Later that same day, mother gave birth to S.A., who had drugs in his system. CFS filed a dependency petition as to S.A. alleging the parents failed to protect (§ 300, subd. (b)) due to allegations of domestic violence and drug use by both parents, as well as mother's alleged mental health issues relating to bipolar disorder and schizophrenia. The petition also included a sibling abuse allegation (§ 300, subd. (j)), based on the fact the minors siblings had just been declared dependents.

Arrangements were made to place S.A. with his siblings in the home of the maternal grandmother. Mother was referred to an inpatient treatment program that had an opening on August 26, 2009, where she could keep her baby, but she failed to follow through. Thus, the infant was detained, and placed in the home of the maternal grandmother along with his siblings. On October 19, 2009, the court declared S.A. to be a dependent child under section 300, subdivisions (b) and (j) at the jurisdiction hearing, which neither parent attended.

By the time of the six-month review hearing, neither parent had participated regularly in the court-ordered treatment program, nor had they made substantive progress in their case plan. Both continued to abuse controlled substances, engage in domestic violence, and had been arrested for drug related crimes. The social worker recommended that services be terminated and that the children remain with the maternal grandmother. In an addendum report dated March 19, 2010, the social worker recommended a permanent plan of guardianship with the grandmother. The court terminated services at the hearing and referred the matter for a section 366.26 hearing to select and implement a permanent plan of guardianship.

Unfortunately, before the guardianship could be established, the maternal grandmother was involved in a motor vehicle accident while she was under the influence of alcohol, with K.C. in the car. K.C. was injured in the accident, so all the children were detained from the grandmother. The maternal grandmother had left the other three children with their paternal grandmother, and it was learned that she had allowed mother to have unsupervised contact with the children. On July 8, 2010, a supplemental petition, pursuant to section 387, was filed, alleging that the prior disposition had been ineffective in protecting the children.

Prior to the jurisdictional hearing on the section 387 petition, CFS submitted its section 366.26 report. CFS recommended a planned permanent living arrangement (PPLA) for the children because the original permanent plan of guardianship was no longer possible. The adoption assessment, submitted on September 2, 2010, indicated

that the four children were adoptable, but were difficult to place due to the size of the sibling group. Because mother was pregnant again, the size of the sibling group was about to increase. The jurisdictional phase of the section 387 petition took place on October 19, 2010, where the court made a true finding.

The children remained in a PPLA for several months while an adoptive home could be identified. Mother continued to visit, but did not interact well with the children. In the meantime, the children were having behavior problems: K.C. made sexual advances to the grandson of the current foster mother, and B.B. was aggressive.

On October 25, 2010, mother filed a petition to modify the previous order (§ 388) terminating services on the ground of changed circumstance. Mother had filed a similar petition in September 2010, but she had withdrawn it prior to the hearing on the petition. In the second petition, mother asserted she had been clean and sober for seven months and had graduated from a drug rehabilitation program, had attended substance abuse classes, engaged in programs dealing with anger management, domestic violence and parenting, and was attending 12-step meetings. Unfortunately, on November 14, 2010, mother gave birth to a baby girl who tested positive for methamphetamine at birth. On January 4, 2011, the court conducted a disposition hearing as to the section 387 supplemental petition, denying services to the parents, and denied mother's 388 petition citing the lack of changed circumstances.

An adoptive home was identified in March 2011, and the children were transitioned into the home in April 2011. By June 2011, both N.A. and B.B.

demonstrated assaultive behaviors towards their siblings, and all four children regressed in their behavior after visits with their parents. B.B.'s behavior problems escalated to the point he was moved to a respite home in July 2011, and eventually the adoptive parents decided not to adopt him. The family who provided respite care for B.B. became his foster family, but they were not yet ready to commit to long-term placement. For that reason, the selection and implementation hearing concerning B.B. was continued.

On August 29, 2011, the court conducted the section 366.26 hearing, and terminated parental rights as to K.C., N.A., and S.A. Both parents appealed.

#### DISCUSSION

Mother argues that the judgment terminating her parental rights must be reversed because she shared a beneficial parent-child relationship with her three children. Father does not present any independent arguments, but joins that of the mother. We disagree.

Section 366.26, subdivision (c)(1), provides that if the court determines, based on the [adoption] assessment and any other relevant evidence, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption, unless one of several statutory exceptions applies. One such exception applies when the court finds a compelling reason for determining that termination would be detrimental to the child because the 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).)

The exception embodied in section 366.26, subdivision (c)(1)(B)(i) applies only when the relationship with a natural parent 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.) The existence of this relationship is determined by the 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.)

For the exception to apply, the emotional attachment between the child and parent must be that of parent and child, rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) A parent's "frequent and loving contact" with the child is not enough to sustain a finding that the exception would apply, when the parents "ha[ve] not occupied a parental role in relation to them at any time during their lives." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.)

The "parental role" language does not preclude a finding of a beneficial parent-child relationship where parents have not enjoyed day-to-day contact and interaction due to the out-of-home placement. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) In fact, several decisions have acknowledged that it is unreasonable to require the parent of a child who has been removed from parental custody to prove that the child has a "primary attachment" to the parent, or to show the parent and the child have maintained day-to-day contact. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299-300; *In re Amber M.* (2002) 103

Cal.App.4th 681, 689.) If that were the standard, the rule would swallow the exception. (*S.B.*, at p. 299.)

Instead, the court determines whether the parent has maintained a parental relationship, or an emotionally significant relationship, with the child, through consistent contact and visitation. (*In re S.B.*, *supra*, 164 Cal.App.4th at pp. 298, 300-301.)

Nevertheless, a termination of parental rights will not be reversed solely because there is “some measure of benefit” in continued contact between parent and child. (*In re C.F.* (2011) 193 Cal.App.4th 549, 557-559.)

In reviewing the record to determine whether there is sufficient evidence to support the judgment, we apply the substantial evidence standard of review. (*In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. (*Ibid.*) We presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) The appellant has the burden of showing that the finding or order is not supported by substantial evidence. (*Christopher L.*, at pp. 1333-1334.)

In the present case, mother did visit regularly, although not frequently enough to develop any meaningful relationship with the three children. It is true that in July 2010, K.C. stated she wanted to live with her mother, and asked for her mother when she was

hospitalized after the car accident. It is also true that K.C. was reported to be inconsolable after one visit in June 2011. However, these isolated instances do not support a finding that a beneficial parent-child relationship existed, especially when viewed in light of information that: (1) mother did not interact well with the children at visits in October and November, 2011, (2) evidence that K.C. wished to remain in the placement and agreed with the plan of adoption; and (3) the lack of evidence of any bond or relationship between mother and K.C.'s younger siblings.

The social worker's reports reveal that the children were happily placed in their adoptive home, where K.C. wished to remain, and where all three children seemed comfortable, content, and happy. The children demonstrated secure attachments to the adoptive parents and their behavior showed they viewed the adoptive parents as parental figures.

We have no doubt that K.C. knew her mother and had an emotional bond with her, but her desire to remain in her current placement and be adopted with her two half-siblings demonstrates that the bond was not an emotionally significant relationship with her mother. Moreover, mother's inability to remain drug free for more than seven months demonstrates that any parent-child relationship is outweighed by the well-being the child would gain in a stable, permanent home with her adoptive parents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

As to father, he did not visit regularly (he visited only three times) due to his incarceration for a significant portion of the dependency period, and there is no evidence

of any emotionally significant relationship with N.A. or S.A., his biological children. We agree with the trial court's finding that the evidence on parental bond does not outweigh the children's need for permanency. Substantial evidence supports the judgment terminating parental rights.

DISPOSITION

The judgment is affirmed.

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RAMIREZ  
P.J.

We concur:

RICHLI  
J.

MILLER  
J.