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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.W. et al.,

Defendants and Appellants.

E054484

(Super.Ct.No. RIJ119448)

**OPINION**

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

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and  
Appellant L.W.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and  
Appellant J.N.

Pamela J. Walls, County Counsel, and Anna M. Deckert and Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

L.W. (the mother) and J.N. (the father) appeal from an order terminating parental rights to two of their children. They argue that the juvenile court should have applied the “beneficial parental relationship” exception to termination. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) This “may be the most unsuccessfully litigated issue in the history of law . . . .” (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413.) While it can have merit in an appropriate case (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301), this is not even close to being such a case. Hence, we will affirm.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

The mother and father had two children together, P.N. (the daughter) and A.N. (the son). Although the parents were no longer living together, the father kept ““popping up”” — i.e., “coming to the [mother’s] residence . . . .”

In March 2010, when the daughter was 11 and the son was 8, the mother was arrested for allegedly slapping the father. She was charged with spousal abuse. The parents had a history of domestic violence.

As a result, the Riverside County Department of Public Social Services (the Department) detained the children and filed a dependency petition as to them.

The children were placed with foster parents who attended their church. They soon came to regard the foster parents as their “grandparents.”

In April 2010, at the jurisdictional/dispositional hearing, both parents submitted on the social worker’s reports. The juvenile court found jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)) and failure to support (*id.*, subd. (g)). It formally removed the children from the parents’ custody, and it ordered the parents to participate in reunification services.

Later in April 2010, the mother was convicted of spousal abuse but released from custody.

In May 2011, at the 12-month review hearing, the juvenile court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26).

In September 2011, at the section 366.26 hearing, both parents’ counsel asked the court to find that termination of parental rights would be detrimental because the parents had maintained regular visitation and contact with the children and the children would benefit from continuing the relationship. Minors’ counsel opposed the request and represented to the court that both children wanted to be adopted. The juvenile court found that both children were adoptable and that termination would not be detrimental. Accordingly, it terminated parental rights.

## II

### THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

As mentioned, the father contends that the trial court should have found that the beneficial relationship exception applied, based on his visitation with the children. The mother joins in the father's contention.

#### A. *Additional Factual and Procedural Background.*

The evidence before the juvenile court at the section 366.26 hearing consisted of a single social worker's report. We confine our review to this evidence. (See § 366.26, subd. (c)(1).)

According to the report, the father was visiting twice a month. The children enjoyed the visits. His interaction with them was "loving and productive . . . ."

The mother, on the other hand, had stopped visiting. The children said they wanted no contact with the her.

Both children "appear[ed] well bonded to [the] caregivers and appear[ed] to be thriving in this home." They called the foster parents "grandma and grandpa." They said that they wanted "to remain in the home and to be adopted by the [foster] parents."

The foster parents were "committed to both children" and wanted to adopt them. They were willing to let the parents continue to have supervised visitation but only if "[1] the parents restrain from domestic violence, [2] the parents respect the rules and boundaries of the home, . . . [3] it is in the children's best interest and [4] the children consent to the visitations."

B. *Analysis.*

As a rule, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions. (*Id.*, subds. (c)(1)(A) & (c)(1)(B)(i)-(c)(1)(B)(vi).) One of these is the beneficial parental relationship exception, which applies when “termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i).) ““The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions. [Citation.]’ [Citations.]” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

“[C]ourt[s] ha[ve] interpreted the phrase ‘benefit from continuing the relationship’ in section 366.26, subdivision (c)(1)(B)(i) to refer to a ‘parent-child’ relationship that ‘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 other words, 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.’ [Citation.]” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

To invoke the beneficial parental relationship exception, “[a] parent must show more than frequent and loving contact or pleasant visits. [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from the day-to-day interaction, companionship and shared experiences.’ [Citation.] The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, . . . the parent must show the child would suffer detriment if his or her relationship with the parent were terminated. [Citation.]” (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555, fn. omitted.)

“We review the trial court’s findings for substantial evidence. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228; see also *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) “‘On review of the sufficiency of the evidence, 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.’ [Citation.]” (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 553.) Thus, “a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Bailey J.*, at p. 1314.)

Here, the evidence indicated that the father had maintained regular visitation and contact. However, it fell short of establishing that he occupied a parental role in the children's lives. To the contrary, both children said that they wanted to stay with the foster parents and to be adopted by them. Plainly, they would benefit from being in a stable adoptive home. There was no evidence that termination would be detrimental.

The parents argue that the trial court should have disregarded the children's express desire to be adopted, because the foster parents were willing to allow continued visitation; thus, the children might not have realized that adoption could mean that they would never see the father again. This gets the burden of proof exactly backwards. We have no way of knowing what the children were told about adoption, because the parents did not call the children (or anyone else) to testify about this. True, the foster parents were willing to allow continued visitation, but only under certain conditions, including that "the parents restrain from domestic violence" and that "the parents respect the rules and boundaries of the home . . . ." Thus, it seems most likely that the children were prepared for the possibility that adoption *might* end their relationship with the father. Even if other inferences were possible, we must draw the inferences that support the order.

The parents rely heavily on earlier social worker's reports and other evidence that were not before the trial court at the section 366.26 hearing. As we held earlier, we cannot consider this evidence. We note, however, that even if we were to consider it, it

fell short of establishing that the children would be harmed by termination — much less “greatly harmed.”

III

DISPOSITION

The order appealed from is affirmed.

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RICHLI  
J.

We concur:

McKINSTER  
Acting P.J.

MILLER  
J.