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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.C., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.O.,

Defendant and Appellant.

E054499

(Super.Ct.No. RIJ119497)

O P I N I O N

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

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,  
for Plaintiff and Respondent.

Defendant, A.O. (Mother), appeals from an order terminating her parental rights concerning her daughter, R.C., pursuant to section 366.26 of the Welfare and Institutions Code.<sup>1</sup> Mother contends the court erred in failing to apply the beneficial parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i), and for failing to order legal guardianship as the permanent plan for R.C. We affirm the order.

## I. SUMMARY OF FACTS AND PROCEDURAL HISTORY

### A. *Background: Detention, Jurisdiction, and Disposition*

On March 20, 2010, Mother got into an argument with her live-in boyfriend. The boyfriend was under the influence of alcohol and methamphetamine and prevented Mother from leaving a room. Mother struck the boyfriend in the face two or three times, then left the house. The boyfriend suffered two black eyes, a cut above one eye, and a scratch on his neck. Mother picked up three-year-old R.C., who was playing with other children at a park in their apartment complex, and went to a friend's house. The following day, Mother was arrested for domestic violence against the boyfriend. The boyfriend was arrested on unrelated warrants.

Because Mother was incarcerated and there was no one else available to care for R.C., plaintiff Riverside County Department of Public Social Services (DPSS) detained the child. (The whereabouts of R.C.'s father was unknown.) Mother provided the social worker with the names of R.C.'s maternal grandmother and a maternal aunt for possible

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

relative placement. She told the social worker she had a drug dependency seven years ago and, after rehabilitation, has had no relapse since then.<sup>2</sup>

DPSS filed a juvenile dependency petition concerning R.C. under section 300. DPSS alleged under section 300, subdivision (b), that R.C. has suffered, or there is a substantial risk that she will suffer, serious physical harm or illness based on allegations that: (1) Mother “engages in physical altercations in the home with her live in boyfriend” and “was arrested for felony domestic violence”; and (2) R.C.’s alleged father is not a member of the child’s household and fails to provide support for R.C. Under section 300, subdivision (g), DPSS alleged that R.C.’s parents cannot care for the child because Mother is incarcerated and father’s whereabouts are unknown.

Following a detention hearing, the court ordered R.C. detained and placed her with her maternal grandmother. Supervised visits between Mother and R.C. were to take place at least once per week.

In a jurisdictional/dispositional report, a social worker noted that R.C. showed no signs of abuse or neglect and did not appear to be suffering emotionally. According to the maternal grandmother, R.C. “asks about her mother and often cries but is eating and sleeping well.” Mother had two to three hour visits each week. R.C. enjoyed the visits

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<sup>2</sup> On March 11, 2010—10 days before the arrest that gave rise to R.C.’s detention—Mother gave birth to a child. Prior to the birth, Mother had agreed to give the child up for adoption because she was not prepared financially or emotionally for another child. DPSS received a report that the newborn tested positive for opiates and morphine. Allegations of neglect by Mother arising from this report were subsequently determined to be unfounded.

and said she wanted to return home with Mother. Mother told the social worker she loves R.C. and “has raised her as best as possible.” She said she will comply with DPSS’s directives and participate in services as ordered. Although she loves her boyfriend, she said she “will not allow him to interfere with her regaining custody of her daughter and she will ensure her daughter’s safety.”

According to the social worker, the “most significant problem requiring intervention by [DPSS] appears to be the mother engaging in domestic violence with her live in boyfriend. Although [R.C.] was not present at the time of the incident, there is concern that there may be ongoing domestic violence and substance . . . abuse, which can lead to serious physical and/or emotional harm to [R.C.]”

After Mother was released from jail on bond, DPSS recommended striking the allegation under section 300, subdivision (g), that Mother cannot care for R.C. because of her incarceration. At the jurisdictional/dispositional hearing, the court did so, and found the remaining allegations true. R.C. was declared a dependent of the court and removed from her parents’ custody. DPSS was ordered to provide, and Mother ordered to participate in, reunification services. Mother’s case plan called for her to participate in a domestic violence and anger management program, counseling, and a parenting class. R.C. continued to be placed with the maternal grandparents.<sup>3</sup>

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<sup>3</sup> At times, social workers refer to R.C.’s prospective adoptive parents as her “maternal grandparents.” It appears from the record that Mother’s parents had divorced in 1988, and Mother’s mother remarried in 1999. References to the maternal grandparents are references to the maternal grandmother and her husband.

## *B. Postdispositional Review Hearings*

In the time between the jurisdictional/dispositional hearing and the six-month review hearing, Mother lived in a two-bedroom apartment with her father. She was employed full time as a surgery referral coordinator and told the social worker she will be able to financially support herself and R.C. when R.C. is returned to her care.

Mother was sentenced to 36 months' probation for the domestic violence charge that gave rise to this dependency case.

R.C. appeared to be developmentally on target. In May 2010, she was referred to counseling to address her fear of abandonment following her removal from Mother. She was diagnosed with adjustment disorder. The counselor reported that she has seen a dramatic change in R.C.'s behavior since counseling began and that R.C. is adjusting well to her placement.

In September 2010, Mother was arrested for driving under the influence of alcohol, thereby violating a condition of her probation. As a result, she was placed under house arrest.

At the time the social worker prepared the six-month status review report, Mother had failed to enroll in domestic violence classes and had not yet arranged to perform community service. She did complete a 14-session parenting class. The class instructor told the social worker that Mother "showed dedication and growth throughout the program and commented on a noticeable difference in [Mother's] attitude at the completion of the program . . . ."

The social worker reported that R.C. “has a lifelong connection and appears very bonded to her maternal grandparents and current caregivers . . . .” The social worker explained that DPSS has made efforts to keep R.C. connected to Mother and her extended family by placing the child with the grandparents and providing supervised visitation in the grandparents’ home. Mother visited with R.C. on Saturdays for four hours at a time. However, the social worker reported that Mother “has missed some visitations, blaming the missed visitations on the caregiver and not taking responsibility as to the effect the missed visits have on [R.C.]”

R.C. told the social worker that she enjoys the visits with Mother. At the beginning of the dependency, R.C. had a “hard time at the end of the visits and would often cry and ask her mother not to leave.” More recently, she “has been adjusting better to the visits . . . and is now able to easily transition back into the home of the caregiver after visits with [M]other.”

In the six-month status review report, DPSS recommended that R.C. continue as a dependent of the court and that Mother be provided with six additional months of reunification services. The agency also recommended that Mother have unsupervised extended and overnight visits and that DPSS have the authority to return R.C. to Mother on family maintenance status if Mother has continued progress with her case plan.

Following the six-month review hearing, the court stated that Mother’s progress has been adequate, but incomplete. The court ordered that DPSS continue to provided

reunification services, and denied the request for unsupervised extended and overnight visitation and for authority to return R.C. home on family maintenance.<sup>4</sup>

In the April 2011 12-month status review report, the social worker reported that Mother was living with her father and a new boyfriend, who had a criminal record. This concerned the social worker, who suggested it was a continuation of her “history of poor decision making skills when it comes to significant others.”

Regarding visitation, the social worker reported that Mother had “difficulty between October to December 2010, promising visitation with [R.C.] and not arriving timely which caused [R.C.] to be upset. She would also cancel her visitation and not see [R.C.] for two week periods of time. Eventually [R.C.] displayed little attachment to her mother and had no sadness when her mother would come and go.” The social worker was also concerned that Mother “was rough housing” with R.C., which left the child “very wound up,” requiring several hours to calm her before sleep. The social worker made suggestions to Mother, such as reading a book to R.C., to allow R.C. to relax before the visit ends.

In January 2011, the visits improved. Mother was on time and interacted well with R.C., playing games and reading stories. The social worker authorized Mother to go to the grandparents’ house three times per week to help with morning and bedtime

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<sup>4</sup> Mother states in her opening brief that the court granted Mother unsupervised visitation and DPSS’s request for discretion to return R.C. to Mother on family maintenance. However, the reporter’s transcript indicates that the court “delete[d] the authorizations requested . . . regarding unsupervised weekends and eventual return on family maintenance.”

routines. When Mother's work schedule made this difficult, she would talk to R.C. by telephone. The social worker reported that R.C. "has developed a stronger bond with her mother and has stated that she wants to go to her mother's house and stay the night." Mother told the social worker that R.C. said "she wants to go home." The caregiver reported that R.C. has "a sad face when her mother has to leave the home."

Mother participated only partially in her case plan and still needed to complete counseling and domestic violence classes. The social worker stated that Mother "states her dedication to having [R.C.] returned to her care but has yet to follow through with actions." The social worker concluded her assessment of Mother by stating that reunification is still a possibility if Mother is able to commit to and begin to fully participate in her case plan. Although Mother expressed her intention to complete her case plan and reunify with R.C., she was amenable to DPSS's concurrent plan of adoption by the grandparents in case R.C. was not returned to her.

DPSS recommended that Mother be provided with additional reunification services and be authorized to have unsupervised extended and overnight visits. The agency also sought authorization to return R.C. to Mother on family maintenance status upon Mother's continued progress.

Prior to the 12-month review hearing, DPSS submitted an addendum report in which it changed its recommendation to terminating reunification services and setting a section 366.26 hearing. The social worker reported that Mother stopped attending

domestic violence classes and did not enroll in or complete other programs as required. Mother also moved without informing DPSS of her new address or telephone numbers.

The social worker visited R.C. at the caregivers' home. R.C. was then four years four months old. R.C. talked to the social worker about the physical violence that occurred between Mother and her boyfriends. According to the social worker, R.C. "continues to be traumatized by her mother's actions even though she completed 12 weeks of therapy." R.C. told the social worker that she loves being at the grandparents' home and wants to remain in their care. She said she would want Mother to live with her at the grandparents' home, but does not want to go to Mother's house. R.C. said she is afraid to see Mother without the grandparents because Mother "might hurt someone."

At the 12-month hearing, Mother was unable to get the day off work to come to court. Her attorney requested a continuance, which the court denied. After argument, the court ordered that services for Mother be terminated and set the matter for a section 366.26 hearing.

### *C. Section 366.26 Hearing*

In DPSS's section 366.26 report, the agency recommended that parental rights be terminated and adoption selected as R.C.'s permanent plan. R.C.'s maternal grandparents were identified as the prospective adoptive parents.

R.C. had been living with the maternal grandparents for approximately 18 months. The social worker reported that R.C. has met all developmental milestones and is doing

well in her Head Start program. She has completed counseling, appears to have adjusted well in the care of her grandparents, and there are no behavioral concerns.

The social worker reported that Mother “went missing and failed to contact” DPSS in March 2011. When Mother was eventually located, she failed to return the social worker’s telephone calls. However, Mother had still been visiting R.C. and, according to the grandparents, the visits “have been appropriate with no further concerns.”

R.C. told the social worker she feels safe and happy living with her grandparents. According to the social worker, R.C. “has developed a healthy bond with [the maternal grandparents] and a close attachment is very evident. The maternal grandparents are providing [R.C.] with her physical, medical, emotional and social needs and there are no reported concerns at this time. It is therefore in the best interest of [R.C.] to remain in this placement, pending completion of the adoption process.”

In a preliminary assessment of the prospective adoptive parents, the social worker reported that the grandparents “have cared for [R.C.] since she was three years old and have had a relationship with [her] since she was born. The prospective adoptive parents and [R.C.] have developed a strong mutual attachment to each other and [R.C.] appears to feel very happy, secure and comfortable in the home. She has adjusted very well to being in the home and receives a lot of love and attention from the prospective adoptive parents and extended family. [R.C.] appears to be thriving physically, developmentally, emotionally and academically. The prospective adoptive parents have expressed a commitment and dedication to [R.C.] and to the adoption.” The grandparents are willing

to continue supervised contact between R.C. and Mother as long as Mother refrains from substance abuse, is appropriate during visits, respects the rules and boundaries of the home, and it is in R.C.'s best interests.

At the section 366.26 hearing, Mother's counsel objected to terminating parental rights. She stated Mother opposed adoption and asked the court to consider legal guardianship. Counsel argued that Mother's visits were appropriate and that Mother has a significant bond with R.C.

The court admitted into evidence the section 366.26 report and preliminary adoption assessment. No other evidence was offered. The court then found, among other findings, that R.C. was adoptable, termination of parental rights would not be detrimental to R.C., and none of the statutory exceptions to adoption applied in this case. The court then terminated parental rights and ordered DPSS to place R.C. for adoption.

Mother appealed.

## II. DISCUSSION

### A. *Parental Benefit Exception*

Mother contends the court erred in failing to find that the parental benefit exception to adoption did not apply. We disagree.

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) "Once the court determines the child is likely to be adopted, the burden shifts

to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) In this case, Mother argued that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i) applies.

The beneficial parental relationship exception applies when there is “a compelling reason for determining that termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To show that the exception applies: “The parent must do more than demonstrate ‘frequent and loving contact[,]’ [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a ‘parental role’ in the child’s life.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; see also *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 [“It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.”].)

The parent must also show that 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. 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.'" (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

We determine whether there is substantial evidence to support the court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re S.B.*, *supra*, 164 Cal.App.4th at p. 298.)

Mother argues that the parental benefit exception applies here because R.C. was closely bonded with Mother and knew Mother as her mother. She points to numerous facts that support the existence of the bond between the two, including: R.C. lived with Mother, prior to the detention, for the first three years of her life; R.C. missed and cried for Mother at the beginning of the case, and later expressed a "sad face" when visits ended; when R.C.'s fear of abandonment issues were alleviated by therapy, her bond with Mother became stronger; R.C. wanted Mother to live with her and the grandparents; Mother called R.C. on the telephone when she could not visit in person; and Mother responded to a concern about roughhousing with R.C. by playing games and reading books to R.C. during visits.

While we acknowledge the facts highlighted by Mother, there is substantial evidence to support the court's determination. Mother's record regarding visitation is mixed. She cancelled, missed, or arrived late for visits in the latter months of 2010,

causing R.C. to be upset. According to the social worker, R.C. displayed little attachment to Mother during this time. Visits did improve in the ensuing months and the social worker reported that R.C. developed a stronger bond with Mother. However, only one or two months later, R.C. told the social worker that she did not want to return to Mother's house, did not wish to extend the time for visits, and was afraid to see Mother without the grandparents because Mother might hurt someone.

Moreover, although R.C. lived with Mother during the first three years of R.C.'s life, there is little evidence as to whether or how Mother actually occupied a parental role in R.C.'s life before or after R.C.'s removal. Indeed, the grandparents reported that prior to the dependency case they acted as surrogate parents to R.C. due to Mother's unstable history. Although Mother was given permission to go to the grandparents' house three times per week to help with morning and bedtime routines, her work schedule prevented her from doing so consistently.

The benefit of a stable, permanent home for R.C. through adoption is also apparent in the record. R.C. told the social worker she feels safe and happy with the grandparents. She has had a healthy, strong, and "lifelong" bond with the grandparents, who provided R.C. with her physical, medical, emotional, and social needs, as well as "a lot of love and attention." The social worker concluded that it "is therefore in the best interest of [R.C.] to remain" with the grandparents. The juvenile court could reasonably conclude that the benefits of adoption outweighed the benefits of maintaining the parental bond with Mother.

Mother suggests that adoption by the grandparents would “upset th[e] family constellation” by “turn[ing] R.C. into Mother’s sister.” We agree with DPSS that the fact that the prospective adoptive parents are Mother’s parents does not bear upon the determination of the applicability of the parental benefit exception to adoption or otherwise preclude the termination of Mother’s parental rights.

In short, although the record indicates that R.C. and Mother shared a positive emotional bond, there is sufficient evidence for the juvenile court to reasonably conclude that maintenance of that bond was outweighed by the benefits of adoption and that Mother failed to establish a compelling reason for determining that termination would be detrimental to the child.

#### *B. Failure to Order Legal Guardianship*

Under a separate heading, Mother contends the court erred in failing to order legal guardianship as R.C.’s permanent plan. The argument appears to be premised upon the assertion that termination of parental rights was error because of the “substantial emotional attachment between R.C. and Mother”—a premise we rejected in part A above. Because we determined that Mother’s relationship with R.C. did not bring this case within the parental benefit exception, “it necessarily follows that the juvenile court correctly determined that adoption was the appropriate permanent plan for [her].” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420.)

To the extent Mother’s argument is based on her view of what is in R.C.’s “best interest,” it is without merit. There is not a “best interests” exception to adoption. (*In re*

*Clifton B.* (2000) 81 Cal.App.4th 415, 427.) That is because “consideration of the child’s best interests is inherent in the legislative procedure for selecting and implementing a permanent plan.” (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1165.) The statutory exceptions to adoption “are a final check to ensure termination of parental rights is in the best interests of the minor and is the least detrimental alternative.” (*Ibid.*) Thus, once the court makes the necessary findings under the statutory scheme to terminate parental rights, it is not required to further consider whether the child’s best interests would be better served by a permanent plan of guardianship. (*Ibid.*)

### III. DISPOSITION

The trial court’s orders are affirmed.

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KING  
J.

We concur:

RAMIREZ  
P.J.

CODRINGTON  
J.