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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

E054539

(Super.Ct.Nos. J229149, J229150,  
J229151 & J229152)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,  
Judge. Affirmed.

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

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County  
Counsel, for Plaintiff and Respondent.

No appearance for Minors.

M.G. (Mother) appeals from the juvenile court's order terminating her parental rights to her children J.A., Z.A., M.A., and A.P. (collectively "the children"). Mother contends the juvenile court erred by terminating her parental rights because Mother and the children have strong parent-child bonds. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).)<sup>1</sup> We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

### A. BACKGROUND

All four of the children are male. In September 2009, J.A. was seven years old; Z.A. was six years old; M.A. was two years old; and A.P. was 11 months old. Mother had a history of methamphetamine abuse and prostitution. Mother and A.P. tested positive for methamphetamine at the time of A.P.'s birth. The three older children shared the same presumed father (Father-A); A.P.'s presumed father was Father-P.<sup>2, 3</sup>

### B. DETENTION

C.C. had a notarized document, dated September 16, 2009, assigning her the full-time care of the two youngest boys, M.A. and A.P. Mother knew C.C. through a mutual friend. As of September 23, 2009, C.C. had been caring for M.A. and A.P. for two to four months. M.M. had cared for M.A. from the time he was born until a few months

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<sup>1</sup> All subsequent statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Mother had two older daughters, ages 12 and 10, who lived with their father in Washington, D.C. and who were not involved in this case.

<sup>3</sup> Neither Father-A nor Father-P is a party to this appeal.

before September 2009. In September 2009, M.M. called C.C. and threatened to harm herself if she were not allowed to visit M.A. C.C. did not know what to do, so she took M.A. to visit M.M. on September 23, 2009.

During the meeting, M.M. took M.A. from his car seat, told C.C. that she was taking him, and entered her apartment with the child. C.C. did not want M.M. to have M.A., so she called for police assistance. When assistance arrived, M.M. explained that she had cared for M.A. since he was an infant. M.M. had a notarized document, dated May 29, 2009, giving her permission to care for M.A. C.C. and M.M. said that Mother failed to provide assistance for M.A. and A.P., despite Mother receiving cash aid. Both caregivers stated that Mother had minimal contact with M.A. and A.P.—visiting the two children only once during a six-week period.

Mother arrived at the scene of the C.C./M.M. dispute, along with the two older children, J.A. and Z.A. Mother stated that she assigned C.C. to care for M.A. and A.P., but she did not want M.M. to have any contact with the children. An Ontario Police Officer discovered that Mother had an outstanding warrant and was driving with an expired driver's license. Mother stated that Father-A was in drug rehabilitation, but was unsure of the exact location. Mother said that Father-P had recently been released from Adelanto prison, and was living in the high desert. The San Bernardino County Department of Children and Family Services (the Department) detained the children. M.A. and A.P. were placed with C.C.; J.A. and Z.A. were placed with a foster family.

The following day, September 24, 2009, Mother was released from incarceration. A Department employee located Father-A and Father-P. Father-A was in a drug

rehabilitation facility in Murrieta. Father-P was arrested on September 23, 2009, for possession of a controlled substance, and was being held at the West Valley Detention Center.

Four section 300 petitions were filed against Mother on September 25, 2009. In the petitions, it was alleged that Mother failed to protect the children. (§ 300, subd. (b).) Specifically, it was alleged that Mother had a history of substance abuse, which limited her ability to supervise the children; she did not provide for the children's needs for food, clothing, and shelter; and Father-A and Father-P had histories of substance abuse, which limited their ability to adequately supervise the children. The juvenile court found a prima facie case was established for removing the children from Mother's care.

C. JURISDICTION / DISPOSITION

On October 8, 2009, a Department employee spoke with Father-A at his residential treatment facility. Father-A said that many times when Mother left J.A. and Z.A. in his care "they would show up with no shoes or underwear." Father-A's girlfriend confirmed J.A. and Z.A. would be dropped off without shoes or underwear, and that the two children were "very dirty" when dropped off. Father-A's girlfriend reported that sometimes Mother did not return to pick up J.A. and Z.A. "for hours or at times weeks." Father-A's girlfriend stated that "many times the children would be scattered at various homes." The same day, a Department employee spoke to Father-P at West Valley Detention Center. Father-P believed that Mother had a substance abuse problem, and he knew that Mother left A.P. with C.C. "on an ongoing basis."

Also on October 8, a Department employee met with Mother at Mother's aunt's house in Ontario. Mother did not have a permanent residence. She had been staying with a friend, but was now staying with her aunt; Mother was looking for a larger home. Mother explained she left M.A. and A.P. with C.C. because Mother did not have room for all of her children. Mother stated she was a "good mother."

Mother explained that she took the children to school every day and picked them up from school on time; she packed them homemade lunches and snacks. Mother said the school principal would testify on her behalf. According to J.A. and Z.A.'s foster mother, the principal said that "many times the children would come to school very late, if at all" and at times nobody came to pick them up. J.A. and Z.A. were both behind in school due to their absences, and J.A. might need to repeat the first grade.

On October 10, a Department employee spoke to J.A. and Z.A. The two children stated that Mother hit them with a belt and left them with "'different' people," but the children had been instructed, "'not to tell' otherwise 'mommy would get in trouble and they could never go home.'" On October 22, 2009, Mother tested positive for marijuana. On November 20, 2009, the juvenile court ordered that J.A. and Z.A. be placed with their paternal uncle (Uncle).

On December 11, 2009, the juvenile court found true the allegations that (1) Mother had a history of substance abuse that limited her ability to provide the children with adequate care and supervision; (2) Father-P had a history of substance abuse that limited his ability to provide the children with adequate care and supervision; and (3) Father-A had a history of substance abuse that limited his ability to provide the

children with adequate care and supervision. The juvenile court ordered that M.A. and A.P. stay with C.C., while J.A. and Z.A. remain with Uncle. The court ordered supervised visitation between Mother and the children two times per week for one hour.

D. SIX-MONTH REVIEW

On March 8, 2010, a family meeting was held to discuss the lack of progress of Mother, Father-A, and Father-P, with their case plans. J.A. and Z.A. were upset about not being placed with M.A. and A.P. A Department employee recommended that M.A. and A.P. be placed in Uncle's home with J.A. and Z.A. The juvenile court authorized the Department to begin taking steps to transition M.A. and A.P. into Uncle's home.

In October 2009, Mother was referred to Catholic Charities for individual counseling. By April 2010, Mother had attended 12 sessions, cancelled four sessions, and failed to appear six times. Mother was terminated from the counseling program. Mother missed two visitation appointments in January 2010, but regularly attended her visitation appointments in the spring of 2010; Mother often arrived late to the appointments. Mother was appropriate with the children during her visits.

M.A. and A.P. did not appear bonded to Mother. They did not run to Mother upon seeing her or cry when the visitation appointments ended. Z.A. seemed to be the child most bonded to Mother; he sought Mother out during visits in order to be held and comforted, and often tried to get her attention from the other three children. J.A. appeared "to have [a] guarded attachment" to Mother, in that he "acts parentified" with Mother. J.A. questioned Mother about whether she was "using weed," instructed her that she needed to "go to classes to stop smoking," and said that she should not "invite

‘all the men to the house.’” J.A. “repeatedly” told a Department employee that he did not want to return to Mother’s custody, but would be okay with weekend visits.

At the six-month review hearing on June 25, 2010, the juvenile court found that placing the children in Mother’s, Father-A’s, or Father-P’s care would be detrimental to the children. The juvenile court found that Mother had made minimal progress with her case plan. The court ordered that M.A. be moved to Uncle’s house, but that A.P. remain with C.C.

E. 18-MONTH REVIEW<sup>4</sup>

Mother failed to arrive on time for her August 12, 2010, visit. The children stayed for an hour long sibling visit, and Mother arrived later that evening. Mother was transported from the visitation location to an inpatient substance abuse treatment program by a Department employee. During a visit on August 27, 2010, at the treatment facility, Mother and the children played at the facility’s playground, and the children had fun running through the sprinklers. When Uncle arrived to pick up the children, he became upset that the children’s shirts were untucked and M.A.’s hair had been combed differently. A Department employee explained that the children had been playing in the sprinklers, which caused their hair and clothes to become disheveled. Uncle complained that the children “looked ‘like clowns’” and said he would no longer bring the three children to visit Mother. M.A., J.A., and Z.A., were not brought for their next visitation appointment with Mother on September 3, 2010.

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<sup>4</sup> The 12-month review hearing was vacated and the matter was continued to the 18-month review hearing.

On September 29, 2010, two Department employees went to Uncle's home unannounced, and asked to see M.A. Uncle asked the Department employees to leave, and did not invite them inside. Uncle requested that all future communications by the Department be conducted via writing. On October 7, 2010, the Department requested that M.A., J.A., and Z.A. be moved to C.C.'s home, because the three children had not been able to visit Mother for over a month. The Department felt that it could not provide reasonable services if Uncle did not allow the children to visit Mother. The Department also asserted that it could not conduct business only by writing, because it was essential to have timely and meaningful conversations with caregivers.

On October 8, 2010, the juvenile court ordered that M.A., J.A., and Z.A. be removed from Uncle's home, and placed with C.C. A Department employee, along with law enforcement, attempted to remove the three children from Uncle's home on October 8 and October 9, but were unable to locate and remove the children until October 11. On October 20, a Department employee interviewed the children individually. Z.A. said that he liked living with C.C. more than living with Uncle, because he was able to see Mother. Mother was able to resume her normal visitation schedule with the children once they were moved to C.C.'s home. The children requested more visitation time with Mother. However, a counselor reported that both J.A. and Z.A. had discussed prior abuse by Mother.

During the two hour weekly visits with Mother, the children responded well to Mother, and Mother appeared nurturing and talkative with the children. Mother required some redirection during her visits with the children. For example, when A.P.

was hit by his brother, Mother's reaction was to ask A.P. why he let himself be hit, as opposed to asking if he was okay.

After Mother was released from her inpatient substance abuse treatment program, she failed to participate in aftercare, failed to attend narcotics anonymous meetings, and failed to drug test; Mother failed to take eight drug tests between November 2010 and March 2011. Mother's visitation with the children was inconsistent, in that she missed one or two appointments per month. "During the visit on December 1, 2010, the children waited an hour for [Mother], [they] kept asking 'where's mommy?', they tried calling her and were very upset that she had not shown up. The older two children [were] guarded regarding visits with [Mother] since that time."

J.A. and Z.A. continued to tell their counselor about prior abuse by Mother. J.A. consistently told his counselor he did not want to live with either of his parents. J.A. said he would still like occasional visits with Mother, but he was "tired" of having the weekly visits. Z.A. was suffering from recurrent memories of Mother striking him, and told his counselor that he was afraid of Mother and no longer wanted to visit her. Z.A. actively complained about having to spend time with Mother. M.A. and A.P. did not ask for Mother or appear excited to see her; however, they were agreeable with visiting Mother.

At the 18-month review hearing on April 19, 2011, the juvenile court found that Mother made only minimal progress toward alleviating the problems that led to the children being removed from her care. Therefore, the juvenile court terminated

Mother's reunification services, but continued the visitation appointments. The court found there was not a likelihood of the children being returned home within the statutory timeframe, and that it was necessary to continue placement of the children outside of Mother's care.

F. TERMINATION

Z.A. continued discussing with his counselor the past physical abuse he suffered by Mother. Z.A. told the counselor that he was afraid to live with Mother, and that "sometimes [he] gets so angry when he thinks about his experiences of physical abuse in the past that he starts hitting himself and then his brother." Both Z.A. and J.A. requested to be adopted by C.C., but also requested to spend summers with Father-A.

In regard to visitation: in March 2011, Mother missed three of four visitation appointments; in April 2011, Mother missed all four visitation appointments; in May 2011, Mother missed one of two visitation appointments; and in June 2011, Mother missed two out of two visitation appointments. J.A. and Z.A. strongly expressed to a Department employee that they were tired of Mother's "constant cancelled visitations and empty promises." Z.A. refused to attend visitations for "many months," stating, "he does not want to see [Mother]."

At the termination hearing on September 14, 2011, Mother argued that the juvenile court should not terminate her parental rights. Mother denied ever physically abusing Z.A., and asserted that she still felt a strong bond with the children. Mother urged the court not to terminate her parental rights due to the bond she shared with the

children, as evinced by the history of the case and the time Mother shared with the children approximately one year prior.

The Department argued that the time Mother spent with the children since March 2011 had “diminished both in quality and quantity.” The Department asserted that the children do have a bond with Mother, but that it was not a close bond. The Department pointed out that the children were disappointed by Mother’s canceled visitation appointments, and asked not to visit with her anymore.

The children’s attorney supported the Department’s argument. The children’s attorney asserted, “[Mother’s] bond with the children does not rise to the level of that required under case law to support any exception” to the termination of parental rights. The juvenile court ordered the permanent plan of adoption for the children and terminated Mother’s parental rights to the children.

### **DISCUSSION**

Mother contends the juvenile court erred by terminating her parental rights. (§ 366.26.) Mother asserts the juvenile court should have allowed her to retain her parental rights pursuant to the parent-child bond exception. (§ 366.26, subd. (c)(1)(B)(i).) We disagree.

If a juvenile court finds that a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights shall not be terminated 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).) “The benefit to the child from continuing such a relationship must . . . be such that the 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.” [Citation.]” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) In other words, for the exception to apply, the bond between the parent and child must be a parent-child bond, rather than the type of bond a child might have with a friendly visitor or non-parent relative, such as an aunt. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) We review the juvenile court’s decision to not apply the parent-child bond exception for an abuse of discretion. (*Aaliyah R.*, at p. 449.)

The first requirement for the parent-child bond exception is that Mother maintain regular visitation with the children, thus, we address that issue first. In March 2011, Mother missed three of four visitation appointments; in April 2011, Mother missed all four visitation appointments; in May 2011, Mother missed one of two visitation appointments; and in June 2011, Mother missed two out of two visitation appointments. The juvenile court could reasonably conclude from this evidence that Mother did not maintain regular visitation with the children, because she missed 10 of the 12 visitation appointments from March 2011 through June 2011. Since Mother did not maintain regular visitation with the children, the juvenile court did not abuse its discretion in concluding that the parent-child bond exception was inapplicable in this case.

Moreover, there is evidence supporting the conclusion that the benefit to the children from continuing a relationship with Mother would not promote the well-being of the children to such a degree as to outweigh the well-being the children would gain in

a permanent home with a new, adoptive parent. Z.A. refused to attend visitations for “many months,” stating that “he does not want to see [Mother].” J.A. said that he would still like occasional visits with Mother, but that he was “tired” of having the weekly visits. J.A. and Z.A. strongly expressed to a Department employee that they were tired of Mother’s “constant cancelled visitations and empty promises.” Both Z.A. and J.A. requested to be adopted by C.C. M.A. and A.P. were not excited to see Mother at visitation appointments, or upset when she left.

The foregoing evidence reflects that Z.A. tried to actively distance himself from Mother by not attending visitation appointments. J.A. was also distancing himself from Mother by expressing a desire to not visit with her every week. The two youngest children did not have strong emotional reactions to Mother’s presence or absence. Given this evidence, the juvenile court could reasonably conclude that being adopted outweighed the benefit from continuing a relationship with Mother, because none of the children appeared strongly attached to Mother. Thus, the juvenile court did not err by not applying the parent-child bond exception.

Mother contends the juvenile court should have applied the parent-child bond exception, because she raised Z.A. and J.A. for a majority of their lives; her visits were regular and appropriate during a portion of the dependency case; and Z.A.’s and J.A.’s guarded behavior towards Mother could be evidence of their attachment to Mother. Mother’s argument points out that the trial court possibly could have reached a different conclusion based on the record; however, it does not explain how the trial court’s ruling was unreasonable in light of the many missed visitation appointments and the children’s

apparent weak bonds with Mother. Thus, we find Mother’s argument to be unpersuasive.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

RICHLI  
J.