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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

E054812

(Super.Ct.No. RIJ118568)

OPINION

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

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Defendant and appellant T.B. (Mother) appeals from orders denying her petition under Welfare and Institutions Code¹ section 388 and terminating her parental rights to her sons, J.P. and D.P.² On appeal, Mother contends (1) the juvenile court erred in denying her section 388 petition; and (2) there was insufficient evidence to support the juvenile court's order terminating parenting rights because the "beneficial parental relationship" exception to termination applied. (§ 366.26, subd. (c)(1)(B)(i).) We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

On August 22, 2009, J.P. and D.P., then seven and six years old, respectively, were taken into protective custody by the Riverside County Department of Public Social Services (DPSS) after they were found wandering without supervision near a riverbed two miles from the mobilehome park where they lived with Mother. An officer went to Mother's home to investigate and found Mother to be "very lethargic" and possibly intoxicated. The officer also noted that the home contained very little food, was unsanitary, filthy and littered with trash, and contained at least 20 40-ounce beer bottles. The children were very dirty and smelled unpleasant, like they had not bathed in a long time.

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

² The children's father, K.P. (Father), is not a party to this appeal; he has not had any contact with the family since July 2008, when he was arrested for a domestic violence incident.

Mother had an open voluntary maintenance case, which began in June 2009 due to substantiated allegations of general neglect. In May 2009, it was reported that Mother had allowed the children to roam around the mobilehome park unsupervised and had refused to do anything about it. As a result of being unsupervised, the children, along with another child, had started a fire in the mobilehome park. It was also reported that Mother did not take care of her children, they were never clean, and Mother had allowed known drug addicts at her house. Mother had an additional substantiated allegation of general neglect in July 2009 when it was reported that Mother had allowed the children to ride in the back of a truck while she was driving. Mother had an unfounded allegation of general neglect in October 2007, after it was reported that the then five-year-old J.P. was filthy and smelled like trash. When questioned, J.P. stated that he could not remember the last time he was bathed. Mother also had a history of abusing controlled substances.

On August 25, 2009, DPSS filed a petition on behalf of the children under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support), based on Mother's neglect of the children and history with DPSS, and Father's failure to provide for the children and his unknown whereabouts. The children were formally removed from parental custody at the detention hearing and placed in a foster home.

The jurisdictional/dispositional hearing was held on September 21, 2009. Mother executed a waiver of rights and submitted on DPSS's reports. The juvenile court found the allegations in the petition true and declared the children dependents of the court. Mother was provided with reunification services and ordered to participate. Mother's case plan required her to participate in general counseling, a parent education program, a

12-step program, a substance abuse program, and random drug testing. The juvenile court authorized supervised visits for Mother with the children, but also unsupervised day visits provided she complied with her case plan and the social worker's directives. The juvenile court further authorized unsupervised overnight and weekend visits, conditioned upon a suitable home evaluation, Mother's compliance with her case plan and directives of the social worker.

Mother received reunification services from September 2009 through October 2010; however, she failed to comply with her case plan. Mother was enrolled in an outpatient substance abuse program, but had 17 unexcused absences. She had also repeatedly tested positive for methamphetamine and marijuana. As a result, on December 29, 2009, she was discharged from the program. The social worker recommended an inpatient substance abuse treatment program, but Mother failed to follow through and continued to abuse drugs. She also failed to participate in her parenting education program and comply with a referral for individual therapy. In addition, she was unemployed and relied on her mother for financial support. Because Mother continued to be noncompliant with her case plan and refused to randomly drug test, the social worker recommended Mother's services be terminated at the 12-month review hearing.

Meanwhile, the children had adjusted to foster care and appeared to be "comfortable and happy." They had established a "positive and productive relationship with the foster mother." The foster mother was supportive of the children maintaining their relationship with Mother and other relatives, and had allowed family members to

visit the children at her home on weekends. Mother had consistently visited the children, and the visits were appropriate and going well. The children appeared to “love and be well bonded” to Mother; but, Mother had not demonstrated she could provide a safe and healthy home for the children.

After having been detained about two weeks earlier, at a September 8, 2009 visit, D.P. was “shy” and “stayed close” to Mother and his brother. He was also “visibly upset,” because “he could not ride with his mother” to a fast food restaurant for lunch. J.P. was more “comfortable” and unreservedly engaged with the social worker.

Additionally, when the social worker met with the children on January 27, 2010, the children informed the social worker that they liked living with the foster mother. They discussed the toys and gifts they had received for Christmas, and also discussed a visit with their mother and maternal grandmother on Christmas. Both the children stated the visit went well, and desired to return to Mother’s care.

The maternal grandmother had also regularly visited the children and was interested in having the children placed in her care. However, ultimately the maternal grandmother’s home was not approved as an appropriate placement for the children. In any event, the maternal aunt later informed the social worker that neither she nor the maternal grandmother desired to be legal guardians of the children due to problems arising with Mother.

The contested 12-month review hearing was held on October 7, 2010. At that time, the juvenile court terminated Mother’s reunification services and set a selection and implementation hearing.

In a section 366.26 report, the social worker noted that the children were placed in their foster home on August 22, 2009, and were thriving developmentally, physically, and emotionally. The foster mother was initially interested in legal guardianship of the children, but later informed the social worker she could no longer be considered as a permanent legal guardian due to a recent medical diagnosis. DPSS determined the children were adoptable and were seeking an adoptive home for the children. Mother was in agreement with finding an adoptive family, and was happy about possibly having contact with the children following the adoption.

By March 2011, DPSS had identified three prospective adoptive homes for the children; the children were getting acquainted with the chosen family. The social worker was informed by the foster mother that the children were “having anxiety about the adoption” and whether they would be able to see their biological relatives and mother during the transition time. On May 11, 2011, the social worker met with the children and talked to them about the length of the transition time and assured them that they would be able to visit their mother and grandmother following the transition time. “Both children appeared ok with the transition and said they understood the reason for the process. They also mentioned good things about the perspective parents such as they like to go camping and they have had a lot of fun when they are with them.” J.P. appeared to be “happy” about the adoption, and stated that he “felt safe with the foster parents” and “had a lot of fun with them.” D.P. “appeared sad about the adoption, but after [they] talked and [J.P.] came in to join [their] conversation, he appeared more relaxed and a little more enthusiastic about the adoption.”

The social worker again spoke with the children on June 8, 2011. J.P. appeared “happy about the adoption” and about leaving his foster mother’s home. He explained that he and his brother had been having “fun with their new parents” and had been going to many “fun places.” J.P. further indicated that he “felt safe with the adoptive parents” and that he had no concerns. D.P. “appeared more happy and upbeat about the adoption during this visit.”

On June 16, 2011, the children were moved into the home of their prospective adoptive parents. The children made a positive transition into this home, and were doing well. The prospective adoptive parents had agreed to allow the children to maintain contact with their mother, relatives, and former foster mother, whom they referred to as “grandma” and with whom they had developed a significant relationship. The prospective adoptive parents had also allowed them to speak with Mother several times a week over the telephone.³

On August 11, 2011, Mother filed a section 388 petition and supporting documentation, seeking return of the children on family maintenance or, in the alternative, reunification services. In support, Mother claimed that she had completed a 15-day inpatient substance abuse treatment program and an outpatient drug program, had tested negative on random drug testing, had attended Alcoholic Anonymous/Narcotics Anonymous (AA/NA) meetings on a daily basis, had participated in daily 12-step

³ Mother’s visits with the children had temporarily ceased after DPSS discovered the children’s behaviors started to change for the worse and Mother had verbally attempted to sabotage the children’s transition into the adoptive home.

meetings, and had housing and financial ability to support the children. Mother completed her inpatient substance abuse treatment program on February 3, 2011, and the outpatient program on July 27, 2011. Mother further asserted that granting her petition would further the children's best interests by allowing the parent-child relationship to grow and strengthen the existing parent-child bonds.

The social worker recommended that parental rights be terminated and that the juvenile court approve the permanent plan of adoption. The social worker noted that Mother had a history of beginning substance abuse programs, but then continuing to abuse drugs. Moreover, the social worker suspected that Mother was using drugs again based on her behavior and slurred speech. The social worker further noted that Mother had failed to maintain a residence and did not have the financial stability or plans to provide for the children. Mother was residing with the maternal grandmother and aunt, and up until March 2011, the relationship between Mother, the maternal grandmother, and the aunt was strained to the point that the maternal aunt no longer desired to be the children's guardian.

Meanwhile, by September 2011, the children were doing "exceptionally well" in their prospective adoptive home. The children were the only children in the home. Since being placed with the prospective adoptive parents, they had been on numerous outings, including their first plane ride to Indiana, and had taken karate lessons and were involved in football. The prospective adoptive parents were also tutoring the children to raise their academic grades. The children conveyed their excitement about their sports activities, new school, tutoring, and first plane ride to the social worker. In addition, the

prospective adoptive parents were willing to have “an open adoption so that the children could maintain contact with their parents and extended family members.”

A combined hearing under sections 388 and 366.26 was held on September 8, 2011. At that time, Mother, in relevant part, testified that she had been abusing drugs and alcohol for about four years; that she had completed an inpatient substance abuse treatment program on February 3, 2011, and an outpatient program on August 31, 2011; that she was participating in AA/NA meetings daily; that she had tested negative for drugs; and that she had been sober for nine months. She further asserted that she obtained about \$700 a month in rental income; and that her living arrangement was in flux because she was unsure whether she was going to sell her mobilehome and move in with the maternal grandmother. She acknowledged not completing a parenting program and participating in only two individual counseling sessions. She further stated that she had consistently visited with the children and called them every day; and that the children loved her and would become emotional when visits ended but they tried to stay strong.

Following argument from counsel, the juvenile court denied the section 388 petition, noting that “Mother’s circumstances may very well be in the process of changing, but the court cannot find a change of circumstance at this time to justify changing the current court order.” The juvenile court further found that it would not be in the children’s best interests to grant the section 388 petition, pointing out that “[t]he children are in need of a stable home and permanence,” which they now have.

The juvenile court subsequently concluded that no exceptions to adoption applied, found the children to be adoptable and terminated parental rights. At Mother's request, the juvenile court referred the matter to mediation for a postadoption contract.

II

DISCUSSION

A. *Section 388 Petition*

Mother contends that the juvenile court erred in denying her section 388 petition. Specifically, she contends that her completion of two substance abuse treatment programs, her daily participation in AA/NA meetings, maintenance of sobriety for nine months, and the children's bond with her and the maternal family constituted changed circumstances such that the juvenile court should have granted her petition and ordered her further reunification services. She further claims that pursuant to the applicable standards set forth in *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly F.*) it was in the children's best interests to grant the petition.

A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interests of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) "The parent bears the burden to show both a "legitimate change of circumstances," and that undoing the prior order would be in the best interests of the child. [Citation.]" (*Ibid.*)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461 (*Angel B.*.) The trial court's ruling will

not be disturbed on appeal unless the trial court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 (*Stephanie M.*)) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion” (*Kimberly F., supra*, 56 Cal.App.4th at p. 522.) Having reviewed the record as summarized above, we conclude the juvenile court properly exercised its discretion by denying Mother’s section 388 petition.

1. Changed Circumstances

The procedure under section 388 accommodates the possibility that circumstances may change so as to justify a change in a prior order. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Mother sought to set aside the juvenile court’s prior order terminating reunification services. Of course, a change of circumstance or new evidence that would justify setting aside the order terminating services and granting her additional services must address the basis for the juvenile court’s original order. In terminating those services, the juvenile court found that Mother failed to make significant progress in her court-ordered treatment plan and that there was no substantial probability the children would be returned to her care if given additional services. Mother’s case plan required her to participate in general counseling, a parent education program, a 12-step program, a substance abuse program, and randomly drug test.

By the time of the section 388 hearing, Mother had only addressed the substance abuse component of her court-ordered treatment plan. She had completed two substance abuse programs, was participating in AA/NA and 12-step meetings, and was randomly

drug testing with negative results. However, the evidence before the court did not compel a finding of either significant progress or a substantial probability that the children might be returned to her custody within an additional six months. Indeed, there was evidence from which the juvenile court properly could conclude just the opposite.

The juvenile court could reasonably infer that Mother could relapse again. Since this case began in August 2009, Mother had been inconsistent in participating in services. The record shows that Mother would start substance abuse programs, but then would get discharged from those programs for using drugs and failing to participate. Moreover, as of September 2011, the social worker suspected that Mother was using drugs again based on her slurred speech and repeated questions and telephone calls eliciting information recently given to her by the social worker. Additionally, by the time of the section 388 hearing, Mother still had not participated in parenting services and had attended only two individual counseling sessions. Contrary to Mother's claim, her substance abuse, albeit a contributing factor, was not the primary problem in this case. Mother also had a history of failing to complete her voluntary maintenance services, which included substance abuse treatment, parenting classes and general counseling, and failing to properly parent and provide safe and sanitary living conditions for the children. In fact, the record shows that Mother's history with DPSS was *primarily* due to her failure to properly parent her children. In light of this failure and Mother's admitted four-year drug and alcohol abuse history, the nine months of negative drug tests, however hopeful, is insufficient to show an abuse of discretion by the dependency court in finding that Mother had not made a permanent change justifying an alteration in the plan for adoption. Further, inpatient

treatment provided such a controlled and structured environment that true recovery and sobriety could not be accurately assessed, let alone predicted. And, her recent completion of an outpatient drug treatment program, while commendable, did not establish (1) that she had overcome her drug and alcohol addiction; (2) that she could properly care and provide for the children; or (3) that she had overcome the problems that led to the exercise of jurisdiction over the children. Mother's financial and living arrangements were still in flux, and she had no plans as to how she would financially support the children if she sold her mobilehome.

The situation in *Angel B.*, *supra*, 97 Cal.App.4th 454 is analogous. The court in that case, after surveying the relevant case law, found that the mother's showing was insufficient to trigger a hearing on her petition to modify. The court found that a prima facie showing of changed circumstances requires a showing that the parent is ready to assume custody or provide suitable care for the child. That the mother had completed a drug treatment program was not enough, especially when the time she had been sober was relatively brief compared to her many years of drug addiction, and given the fact that she had been unable to remain sober in the past, even when the stakes involved were the loss of another child. The mother there—like Mother here—also had not introduced evidence that she had a housing situation suitable for the children or that the children had expressed a preference for living with the mother.⁴ (*Id.* at pp. 462-463.) Although the mother in *Angel B.* had battled drug addiction for *many* years, as compared to the four

⁴ Although Mother's section 388 petition generally alleges that she "has housing," Mother admitted at the section 388 hearing that her living situation was in flux.

years in the present case, a recent nine-month period of sobriety is still relatively short in comparison with a four-year substance abuse problem.

Mother argues that even if she had made several ““attempts”” to become sober, she had ultimately succeeded at maintaining her sobriety, and notes her “change of circumstances stands in sharp contrast to the circumstances presented in *In re Clifton B.* (2000) 81 Cal.App.4th 415 [(*Clifton B.*)]” The father in *Clifton B.* had a long history of drug abuse, and during the dependency case he went through periods of sobriety and relapses. (*Id.* at pp. 419-424.) The court in *Clifton B.* held that even full compliance with a treatment plan, plus seven months of clean drug tests, does not necessarily constitute sufficiently changed circumstances, especially given the father’s history of relapses. (*Id.* at pp. 423-424.) Here, again, although Mother claims to have had only a four-year drug history, there was no evidence in the record that she had any significant period of sobriety. In contrast to the sobriety-relapse cycle in *Clifton B.*, Mother asserts that she did not find a program “properly suited to her particular needs.” The argument implies that the nine-month period of sobriety was her first real attempt to overcome a four-year methamphetamine, marijuana, and alcohol addiction. That attempt was too late and too short to constitute a significant change of circumstances to warrant a change in the juvenile court’s prior order.

Mother suggests that the children were removed from her care *solely* due to her substance abuse problem, “which led to her lack of supervision” and, therefore, DPSS’s claim that Mother still had not completed a parenting program or showed that she could maintain a safe and clean home does not “materially” impact “the significant change

Mother established.” This argument is unpersuasive. The record shows that the children were removed from her care due to her poor parenting skills, such as her failure to supervise the children, failure to provide a safe and sanitary home for the children, failure to provide for the children, and failure to take care of the children. Although Mother’s poor parenting skills may have been the result of her substance abuse, the record fails to support her position that the “children were removed [solely] because of her substance abuse problem.” In fact, in October 2007, it was reported, although not ultimately “substantiated,” that J.P. was “filthy and smelling like old trash.” And in May 2009, it was reported, and “substantiated,” that the children were not supervised and allowed to roam around the mobilehome park. When Mother was informed of the children’s actions, Mother refused “to do anything about it.” Finally, in July 2009, Mother was cited for having the children ride in the back of a truck. None of these child care lapses were attributed to Mother’s substance abuse problem. Moreover, although there is no question that drug abuse plays an important part in many dependency cases, drug abuse is neither a necessary nor sufficient cause of poor child care—a parent may have a substance abuse problem but still be able to properly care for his or her child. Mother’s failure to complete a parenting class was a significant lapse in her compliance with the reunification plan.

Thus, against the backdrop of Mother’s troubled past, the juvenile court did not abuse its discretion in finding that her recent efforts at rehabilitation or her nine-month period of sobriety established only *changing* circumstances and not *changed* circumstances sufficient to warrant a modification of the court’s termination of

reunification services order. (See *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309 [burden on parent to show changed circumstances]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 49 [merely changing circumstances].)

2. Best Interests of the Children

Even assuming *arguendo* that Mother showed changed circumstances, she did not establish that reunification services would be in the children's best interests.

Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678, 697.) By the time of the section 366.26 hearing, the primary consideration in determining the child's best interest is assuring stability and continuity. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317; see also *In re Amber M.* (2002) 103 Cal.App.4th 681, 685 [citing *Stephanie M.*, the appellate court reasoned that after services are terminated, the focus shifts to the child's need for permanency and stability].) "[I]n fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.]" (*Stephanie M.*, at p. 317.) Accordingly, "[a]t this point in the proceedings, on the eve of the selection and implementation hearing, the children's interest in stability was the court's foremost concern, outweighing any interest mother may have in reunification." (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.) We review the lower court's denial of a section 388 petition for abuse of discretion. (*Ibid.*)

On this record, Mother did not establish that the children's need for stability and continuity would be advanced by reunification efforts. The past conduct of Mother indicated that there was no guarantee that Mother would successfully complete family

reunification services if they were reinstated. In fact, by the time of the section 366.26 hearing, Mother still had not participated in parenting services and had attended only two individual counseling sessions. Additionally, her financial and living arrangements were still in flux, and she did not demonstrate that she could provide a stable home for the children. A permanent plan that offered stability was in the children's best interests at this stage of the proceedings. The placement is stable and positive for the children, and the children are adoptable. The opportunity for the children to have a permanent adoptive home could be lost as time passed while Mother was given further opportunity to demonstrate the ability to provide a permanent, safe, and stable home for the children. It is not in the children's best interests for permanence to be delayed for an unknown or indefinite period of time, with no certainty or even likelihood Mother could progress to the point of obtaining custody of the children. The juvenile court therefore did not abuse its discretion in determining that it was not in the children's best interests to grant Mother's section 388 petition.

In arguing that the requested change in this case is in the children's best interests, Mother focuses on the three factors set out in *Kimberly F.*, *supra*, 56 Cal.App.4th 519. The *Kimberly F.* court, after rejecting the juvenile court's comparison of the biological parent's household with that of the adoptive parents as the test for determining the child's best interest, identified three factors, not meant to be exclusive, that juvenile courts should consider in assessing the issue of the child's best interest: (1) the seriousness of the problem that led to dependency and the reason the problem had not been resolved by the time of the final review; (2) the strength of the relative bonds between the child to

both the child’s parent and the child’s caretakers and the length of time the child has been in the dependency system in relation to the parental bond; and (3) the degree to which the problem that led to the dependency may be easily removed or ameliorated, and the degree to which it actually has been. (*Id.* at pp. 530-532.)

These factors, however, focus primarily on the parent and fail to take into account our Supreme Court’s emphasis on the child’s best interest once reunification efforts have failed. (*Stephanie M., supra*, 7 Cal.4th at p. 317.) “[A] primary consideration in determining the child’s best interests is the goal of assuring stability and continuity.” (*Ibid.*) “When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role.” (*Ibid.*) Thus, we consider the *Kimberly F.* factors only as they *aid in determining how best to achieve continuity and stability.*

Focusing on the bond factor set out in *Kimberly F.*, Mother argues that the children “had a lifelong and loving relationship” with her, “in comparison to three short months with strangers.” She further claims that the children wanted to see her, and that they were “sad” when “notified . . . they would be forced to accept the idea of adoption.” While the record is clear that the children wished to maintain contact with Mother, they *also* wished to continue to see their maternal grandmother, relatives, and former foster mother with whom they had developed a significant relationship. The record shows that the children were having “anxiety” about whether they would be able to visit their biological relatives and Mother during the transition time and once they were adopted, and not necessarily about being adopted by their prospective adoptive parents with whom

they were developing a relationship. Although initially D.P. appeared “sad” and J.P. was “ok” with the adoption, once the children were placed in their adoptive home, they were doing “exceptionally well.” The children repeatedly stated that they felt safe with the prospective adoptive parents and were receiving parental care and guidance, which they lacked while in Mother’s care. The children were going on numerous outings, receiving tutoring, taking karate lessons and participating in football. The children had conveyed their excitement about these activities to the social worker. Thus, the juvenile court did not abuse its discretion in its apparent rejection of the bond factor as requiring a finding that the best interests of the children would be served by providing Mother more reunification services.

In sum, granting Mother additional reunification services in the hopes the children could safely be returned to her care at some future point would mean delaying the permanent plan of adoption and contrary to the children’s best interests. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) As much as Mother was to be commended for her efforts to become an effective parent and resolve her alcohol and drug addiction, the fact remained that the children could not safely be maintained in Mother’s home. Therefore, pursuant to *Stephanie M.*, *supra*, 7 Cal.4th at page 317, the juvenile court did not abuse its discretion by denying Mother’s section 388 petition.

B. *Termination of Parental Rights*

Mother contends that the juvenile court erred by failing to find that the “beneficial parental relationship” exception to termination applied as to the children.

In general, 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 (§ 366.26, subds. (c)(1)(A), (c)(1)(B)(i)-(vi)), including 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.” (§ 366.26, subd. (c)(1)(B)(i).)

“When applying the beneficial parent-child relationship exception, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. If severing the existing parental 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 B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.)

“‘[F]or 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.’ [Citation.]” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) The parent must show more than frequent and loving contact or pleasant visits. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) “‘A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been

adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be *beneficial to some degree*, but that does not meet the child's need for a parent.' [Citation.]" (*Jason J.*, at p. 937.)

"The parent contesting the termination of parental rights bears the burden of showing both regular visitation and contact and the benefit to the child in maintaining the parent-child relationship. [Citations.]" (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) This court must affirm a juvenile court's rejection of these exceptions if the ruling is supported by substantial evidence. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) We review "the evidence most favorably to the prevailing party and indulg[e] in all legitimate and reasonable inferences to uphold the court's ruling." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297 (*S.B.*)) Because Mother had the burden of proof, we must affirm unless there was "indisputable evidence [in her favor, which] no reasonable trier of fact could have rejected" (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

Here, Mother could satisfactorily demonstrate that she had maintained regular contact with the children within the confines of her visitation order. The social worker reported that Mother was "faithful and consistent" with her visits, and had only missed two visits in January 2010. She had visited the children on a weekly basis for several hours at the foster mother's home, and the visits were reported to be appropriate. Mother would bring food, games, and family photographs for the children. She would also play ball with the children in the front yard of the foster mother's home. Additionally, once her reunification services were terminated, Mother continued to regularly visit the

children and the visits were reported to be appropriate and positive. Hence, Mother could adequately show that she had regularly and consistently visited the children.

Nonetheless, Mother had failed to show that the children would benefit from continuing the relationship. There was no evidence that the children would be harmed, much less “greatly harmed,” (*In re B.D.*, *supra*, 159 Cal.App.4th at pp. 1234-1235) by termination of parental rights. In fact, the children understood that they needed an adoptive home, and they desired to maintain contact, not only with Mother, but with their *foster mother*, with whom they had developed a significant bond as well. The children also sought continued contact with their maternal grandmother and relatives. The children had never expressed a yearning to live with Mother only or with Mother and the prospective adoptive parents; rather, they expressed a desire that they maintain contact with their mother, biological relatives, and foster mother. And, though D.P. had become “visibly upset” when he could not ride with Mother to a fast food restaurant for lunch, that incident occurred a mere two weeks after being removed from his mother’s care, and there are no other later incidents to suggest that the children’s *primary* attachment was to Mother.

Furthermore, there is insufficient evidence that the children would benefit more from continuing their parent-child relationship with Mother than from adoption. The children had been out of Mother’s care for more than two years by the time of the 366.26 hearing, and they were doing “exceptionally well” in the prospective adoptive home, where they had lived for three months. Mother simply did not meet her burden to show that the bond between her and the children was so strong and beneficial to the children

that it outweighed the benefit the children would receive from having a stable, adoptive home. The children specifically negated any such showing by repeatedly stating that they felt safe with the prospective adoptive parents and had fun with them. Moreover, J.P. appeared to be “happy” about the adoption, and D.P., although initially “sad,” later appeared to be “more happy and upbeat about the adoption.” The children were receiving parental care and guidance from the prospective adoptive parents, going on numerous outings, receiving tutoring from them to increase their academic grades, taking karate lessons, and participating in football. In fact, the children conveyed their excitement about these activities to the social worker. The children appeared to be bonded to the prospective parents and interacted with them as their parental figures.

After having lived through repeated neglect by Mother, the children needed stability, safety, and permanency. Despite the evidence that the relationship between Mother and the children had some positive aspects and that the children desired to maintain contact with her, the evidence was insufficient to establish that the children were so bonded with Mother that it would be in their best interests to forego the benefits of adoption. Considering all of the circumstances in this case, the juvenile court reasonably determined that the children’s need for permanence, stability, and safety outweighed the benefits the children would derive from maintaining their relationship with Mother.

Mother claims that the termination of parental rights will be detrimental to the children because the children called her “‘mommy,’ ran up to her when visits started, and told her they loved her.” In support, she further points to the children’s wishes and the

prospective adoptive parents' willingness to maintain contact with her. That, however, is not the standard. Rather, the juvenile court must look at whether the children are bonded to Mother, and then it must weigh that bond (if any) against the benefit of adoption by the prospective adoptive parents. (*In re B.D.*, *supra*, 159 Cal.App.4th at pp. 1234-1235.)

Mother insists that “not only did she have a ‘primary’ attachment with her children, she was the children’s only true parent figure.” The record belies this contention. As previously mentioned, the children desired continued contact not only with Mother, but their maternal grandmother, relatives, and former foster mother whom they referred to as “grandma.” Furthermore, the record shows that the maternal grandmother, the former foster mother, and the prospective adoptive parents also played parental figures in the children’s lives. Moreover, the children would not have been removed from Mother’s care if she had been a “true parent figure” to these children. The children were repeatedly found unsupervised, roaming the mobilehome park, and filthy.

Mother cites *S.B.*, *supra*, 164 Cal.App.4th 289, in which the appellate court concluded that the juvenile court erred in declining to apply the beneficial parental relationship exception since the evidence showed that the child would be “greatly harmed by the loss of her significant, positive relationship” with the father. (*Id.* at p. 301.) In that case, the child continued to display a strong attachment to the father after her removal; she was unhappy when visits ended and tried to leave with the father; and she had desired to live with her father. (*Id.* at pp. 293-294, 298-301.) Most significantly, unlike here, a bonding expert testified there was a potential for the six-year-old child to be harmed if the relationship with her father were severed, and the juvenile court found

that the child shared “an emotionally significant relationship” with her father. (*Id.* at pp. 295-296.) Further, unlike Mother in the instant case, the father in that case ““complied with every aspect of his case plan”” (*id.* at p. 293) and placed her needs above his own (*id.* at p. 298). Here, there was no such testimony from a bonding expert or finding by the juvenile court that the children shared an “emotionally significant relationship,” or that Mother complied with her case plan and placed the children’s needs over her own. Thus, *S.B.* is entirely distinguishable from the instant case. “*S.B.* is confined to its extraordinary facts,” none of which are present here. (*In re C.F.* (2011) 193 Cal.App.4th 549, 558.)

Mother also relies on *In re Amber M.*, *supra*, 103 Cal.App.4th 681, in which the appellate court concluded it was error to decline to apply the beneficial parental relationship exception with regard to three children who had been out of their mother’s care for more than two years. However, in *Amber M.*, the children’s therapists, the family’s court-appointed special advocate, and a psychologist who conducted a bonding study all concluded that severing the parental bond could be detrimental to the children. (*Id.* at pp. 689-690.) No such evidence was presented here. The *Amber M.* court also noted that the case was heard in “10 different sessions over a period of months,” and that “[p]erhaps after the fragmented hearing process the court lacked a clear concept whether or not the exception had been proved.” (*Id.* at p. 691.) In contrast, the instant case was heard in one day, and the juvenile court thoroughly considered all of the evidence. There is no indication that the juvenile court lacked a clear understanding of whether the exception had been proved.

Mother also emphasizes that the prospective adoptive parents were willing to have an “open adoption,” and argues that “the court erred by selecting adoption with the promise of an ‘open adoption’ as a means to preserve bonds that otherwise called for implementation of legal guardianship.” Although the record shows that the juvenile court considered the social worker’s reports prior to terminating parental rights, there is no evidence to suggest that the court was considering the prospective adoptive parents’ readiness to an open adoption when it made its order. In fact, the juvenile court referred the matter to mediation for a postadoption contract *at Mother’s request*, and was not selecting adoption with the promise of an “open adoption.” The juvenile court found no exceptions to termination of parental rights applied and concluded adoption to be in the children’s best interests prior to Mother’s request.

Mother further argues that based on the children’s desire to maintain contact with Mother, the prospective adoptive parents’ willingness to have an open adoption, DPSS’s placement of the children with the particular prospective adoptive home, and DPSS’s insistence that the children maintain their relationship with their biological family, the juvenile court should have implemented “a plan short of adoption.” But a guardianship—the preferred permanent plan when adoption is not possible—“is ‘not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.’” (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) Thus, guardianship would not have provided the children with the same degree of closure as adoption.

In sum, substantial evidence shows that the children were doing very well in their prospective adoptive home and that they were emotionally stable there. The children

were happy in their placement and were building a strong bond with their prospective adoptive parents. The children looked to them for comfort and safety, and the prospective adoptive parents were committed to providing a permanent home for them. We, therefore, conclude that there is substantial evidence to support the juvenile court's finding that the beneficial parental relationship exception did not apply.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

RICHLI

J.

KING

J.