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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re R.L. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L. et al.,

Defendants and Appellants.

E054994

(Super.Ct.Nos. J228302 & J228303)

OPINION

APPEAL from the Superior Court of San Bernardino County. Barbara A.

Buchholz, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and  
Appellant J.L.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and  
Appellant J.M.

Jean-Rene Basle, County Counsel, and Svetlana Kauper, Deputy County Counsel,

for Plaintiff and Respondent.

## I

### INTRODUCTION

Mother and father (parents) separately appeal from orders denying their petitions under Welfare and Institutions Code section 388<sup>1</sup> and terminating their parental rights to their two-year-old son, R.L. (born June 2009) and four-year-old daughter, I.M. (born August 2007). Parents contend the juvenile court abused its discretion by denying their section 388 petitions rejecting the beneficial parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(I). Parents join in each other's arguments on appeal to the extent they are applicable.

We conclude the juvenile court did not abuse its discretion in denying parents' section 388 petitions and did not err in rejecting the beneficial parental relationship exception to adoption. The judgment is affirmed.

## II

### FACTS AND PROCEDURAL BACKGROUND

Before the inception of the instant juvenile dependency proceedings in July 2009, mother had a history of juvenile dependency intervention, beginning in 2005, with the birth of her son, J.L. J.L. had a different father than R.L. and I.M. In 2005, CFS removed J.L. from mother shortly after he was born. J.L. required hospitalization for four months, after he was born with serious medical problems. Additionally, mother

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

failed to visit him or learn medical tasks required to care for him. J.L.'s father also failed to show any interest in the child. Mother and J.L.'s father received family services from November 2005 to February 2008. Mother's functioning level and IQ were reportedly very low. During psychological evaluations in 2007 by two doctors, it was concluded that she was incapable of providing adequate care for her infant without assistance.

J.L.'s father failed to reunite with J.L., but mother reunited with J.L. by completing her case plan and agreeing to raise J.L. with the help of maternal grandmother and step-grandfather, with whom mother lived. J.L. was returned to mother's care in 2007, shortly before I.M.'s birth. The family's social worker received a referral from the hospital at the time of I.M.'s birth in 2007, because mother had not had any prenatal care and had a history of being dishonest at the hospital. With maternal grandmother's help, mother was able to provide adequately for J.L. and I.M. at that time. As a result, in February 2008, the juvenile court closed the dependency case. Then two months after the juvenile dependency case was dismissed, mother moved out of grandmother's home, moved in with her boyfriend (father), became pregnant, started using drugs again, and gave birth to R.L. in June 2009. San Bernardino County Children and Family Services (CFS) was notified that both mother and R.L. tested positive for drugs at the time of R.L.'s birth.

On July 15, 2009, a social worker visited mother and father's home. They were living with maternal grandfather (grandfather) and maternal uncle. The home was cluttered and there were no provisions for the care of an infant. Mother was easily confused, did not recall when R.L. was discharged or what his weight was. Mother and

father were asked to take a drug test but did not do so. The social worker asked mother a second time to test for drugs. Mother said she was overwhelmed by parenting three children. She conceded that during her pregnancy with R.L., she had used methamphetamines, including two weeks before his birth. After his birth, she used methamphetamines on June 26 and July 15, 2009. Mother also asked to be enrolled in an anger management program because of anger issues.

Father initially was unavailable during the investigation process. Mother acknowledged father had become aware of mother's use of drugs when she and R.L. tested positive for drugs at the time of R.L.'s birth but father did not indicate any concern. Father verified this later on July 24, 2009. Mother and father failed to drug test, as requested on July 17, 2009. Due to concerns about the children's safety, J.L., I.M. and R.L. were taken into protective custody on July 22, 2009.

On July 27, 2009, CFS filed a juvenile dependency petition on behalf of the children pursuant to section 300, subdivision (b) (failure to protect).<sup>2</sup> The petition alleged mother had a history of substance abuse; mother and R.L. tested positive for methamphetamine at birth; mother had developmental disabilities that limited her cognitive skills and ability to parent; and mother had a history of neglecting J.L. As to father, the petition alleged that his ability to care for and supervise the children was unknown, but he should have known mother had a substance abuse problem. At the

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<sup>2</sup> J.L. is not a party to this appeal since the court in 2011 ordered jurisdiction in J.L.'s dependency matter terminated, with J.L. placed in the custody of his biological father.

detention hearing on July 28, 2009, the juvenile court ordered the children detained and placed in foster care. The parents were ordered to submit to random drug testing and were given supervised hour-long visits, twice weekly.

CFS reported in the jurisdiction/disposition hearing report filed on August 18, 2009, that mother tested positive for amphetamines on July 23, 2009. Father did not test for drugs. Initially, parents were not cooperative in making use of reunification services but eventually began to participate in services. Mother participated in a five-month outpatient drug and alcohol treatment program and tested for drugs, with negative results. At the pretrial settlement conference on August 28, 2009, the court found that the children came within section 300, subdivision (b), and ordered the children removed from their parents' custody. Visitation remained the same as previously ordered.

At a nonappearance review on October 7, 2009, CFS reported that although mother was participating in a drug rehabilitation program, she tested positive for drugs on a few occasions and father had failed to test. At a nonappearance review on December 10, 2009, CFS reported that father had failed to test for drugs three times and tested positive for drugs on November 6 and 18, 2009. Father and mother denied that father had used drugs. Father claimed he did not have an addiction problem and was merely attending treatment classes for mother, who had the problem. Mother, who had been in an inpatient drug treatment facility for the past several months, also tested positive for methamphetamines on multiple occasions. The social worker was concerned mother was not benefiting from participating in drug relapse prevention, parenting and anger management programs.

The CFS reported in its six-month status report, filed in February 2010, that Father participated in counseling, during which he worked on parenting issues, honesty, lying, and understanding why he was in denial about his drug problem. Father began a drug treatment program in January 2010 and completed a 12-week parenting class. Father reportedly left halfway through every treatment session and reportedly gained little insight into parenting. Father continued to claim mother had problems with drugs, not him. Because mother had received several positive drug tests, she was dropped from her drug treatment program in September 2009. The social worker believed mother remained at risk of recidivism, particularly since she was living with father, who was a drug user and in denial of his own problem with drugs. Mother also reportedly had gained little insight into parenting. The social worker requested mother to retake the parenting class, which she did. Mother and father continued visiting the children regularly, twice a week.

CFS reported in its 12-month status review report, filed in September 2010, that mother and father had made steady progress under their case plans. Nevertheless, they still had not demonstrated they were engaged in the drug and alcohol abuse recovery process and had not obtained sponsors to further their substance abuse treatment. CFS remained concerned that mother and father had not achieved a sufficient level of comprehension from attending the various programs. At the 12-month status review hearing on September 22, 2010, the juvenile court found that mother and father had made substantial progress in reunifying and authorized four hours per week of unsupervised visits.

A month later CFS reported that during one of mother's visits with J.L. at Chuck E. Cheese, J.L. sustained a neck injury when a necklace he was wearing caught on the inside of a tube slide. J.L. and I.M. told the social worker mother was at home at the time. J.L. said his uncle helped him get off the slide. Mother and father claimed father rescued J.L. and mother was there but was not able to go into the tube to assist J.L. The juvenile court set the matter for a contested hearing on the issue of supervised visitation.

In an addendum report filed in December 2010, CFS reported that the children's foster parent and the social worker had observed that mother lacked parenting skills and father deferred to mother on disciplinary matters. R.L. cried when he heard his parents' voices and I.M. was out of control when she was with mother and father. In addition, father had tested positive for alcohol within the past month. CFS was concerned that mother and father were not progressing with their drug and alcohol treatment. They were not regularly attending Narcotics Anonymous (NA) or Alcoholics Anonymous (AA) twice a week and still had not obtained a sponsor. CPS concluded that if supervision over mother and father was withdrawn, they would return to their previous adverse habits.

At the contested hearing on supervised visitation in January 2011, father testified he had been attending AA meetings for three months, had a sponsor during the past two weeks, had stopped drinking alcohol after he had last tested positive, had attended counseling, and had attended an outpatient program for three months. The social worker testified that mother and father had taken the parenting course three times and still did not seem to understand basic parenting concepts. In addition, during the past 18 months of

reunification services, the parents went through the motions of participating in drug treatment programs but had not followed through with attending NA and AA meetings, and had not obtained a sponsor until two weeks before the January 2011 hearing. Mother and father claim they attended NA and AA meetings but throughout the past year failed to provide any confirmation.

The contested hearing on visitation was continued to February 2011, during which mother testified that she had lied about attending NA and AA meetings. CFS reported that mother and father's visits during the past month had been more appropriate and parents had done a better job of setting boundaries. Nevertheless, during the contested hearing, the trial court stated that it was "troubled by the credibility issues in this case" because "the parents did not have [too] much compunction to misstate the truth to the social worker." The court noted that it had authorized unsupervised visitation based on parents' representations, which the court later discovered were not true. "For that reason the Court does not have a lot of confidence in allowing the minors to return to unsupervised [visitation] at this time." As a consequence, the court authorized CFS to continue requiring supervised visits.

CFS reported in its 18-month status review report, filed on March 11, 2011, that parents had participated in inpatient and outpatient drug treatment, three sets of parenting classes, and counseling. Mother also participated in a "SART program."<sup>3</sup> The parents

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<sup>3</sup> This acronym is undefined in the record. We assume SART refers to "Screening, Assessment, Referral, and Treatment."  
<http://hss.sbcounty.gov/Childrens%20Network/SART.htm>

were expected to participate in nine months of ongoing substance abuse treatment, such as NA or AA, to prevent relapse. They failed to do so. Father admitted drinking and had two positive tests. The social worker reported that mother and father finally admitted in January 2011, that they had lied for the past nine months to the social worker and court that they were attending weekly treatment, had a sponsor, and were working on maintaining sobriety. Mother initially also failed to inform the social worker or the court that she had an ongoing, long-term addiction problem. She lied that she had only used drugs for three years, whereas she had been using drugs for over seven years. During the two-month period after the January 2011 hearing, parents began attending AA and NA meetings and father did not have another positive test for drugs or alcohol. Parents continued to visit the children consistently and their visits went well.

CFS further stated in the March 2011 status report that, although mother and father loved their children, the social worker could not recommend returning the children to the parents because of the parents' "ongoing lying, lack of compliance in services, the parents['] lack of concern regarding the father['s] ongoing drinking and two positive tests. Most important is the knowledge that two other psychologists have reported to this court that the mother does not have the intellectual capacity to raise young children without 'direct and frequent supervision.' The extended relatives have clearly demonstrated to this Court that they will not follow Court Orders and are in denial of the parents problems, thus, could not provide adequate supervision." In addition, the parents demonstrated a profound lack of parenting skills, even after taking a parenting course three times.

The social worker added that one of the biggest concerns was that the children were under the age of four and could not adequately speak on their own behalf, placing them at even greater risk. Mother previously mentioned to the social worker that, because she had felt stressed from raising her children, she turned to methamphetamine. She did not consistently participate in substance abuse treatment and was living with father, who had admitted drinking and had not taken his sobriety seriously. In addition, the instant proceedings were the second time mother's children had been removed from her care, because of the same problems resulting in the first removal. Mother had reverted back to abusing drugs after she moved out of maternal grandmother's home, resulting in the instant case.

The social worker further reported that the children had been in their current foster home since the inception of the instant proceedings, for over two years. The children were bonded to their foster family and their foster parents expressed an interest in adopting them. CPS recommended terminating reunification services and proceeding with a section 366.26 hearing (.26 hearing).

In an addendum report filed in May 2011, CFS recommended the children be placed for adoption. The social worker reported that the family was living in grandfather's home. Mother denied that grandfather had ever been arrested or committed a crime, but the social worker ran a criminal background check on grandfather and discovered he had an extensive criminal history dating back to the early 1970's. He had been convicted eight times for driving under the influence (DUI), and also convicted of

driving with a suspended license, battery of a spouse or cohabitant, and theft. He was currently on probation for his last DUI and his license was suspended.

The social worker concluded that parents were living in an environment that made it extremely difficult to remain sober on a long-term basis. Furthermore, the parents had never lived independently and did not have the means to live outside grandfather's home. In addition, mother most likely was aware of grandfather's criminal history and that he was driving with a suspended license, yet lied about these facts. The social worker concluded mother could not be trusted to tell the truth about what was occurring in her home and believed parents' home was not a safe environment for the children.

At the contested 18-month review hearing on May 16, 2011, the court terminated reunification services and set a .26 hearing. The court further authorized two hours of supervised visitation each week, as before. Mother and father filed writ petitions, challenging the May 16, 2011, ruling ordering a .26 hearing. The parents' writ petitions were thereafter dismissed pursuant to parents' counsels' determination that there was no legal or factual basis for proceeding with parents' writ petitions.

On September 1, 2011, CFS filed a .26 hearing report, recommending termination of parental rights and adoption. Parents continued to visit the children regularly, as parents had done since the inception of this case. The children continued to reside with the same foster family they had lived with since July 2009.

In September 2011, father and mother filed section 388 petitions, and mother filed an amended petition. Parents requested the court to return the children to their care or, alternatively, authorize additional reunification services. Father alleged that since the

March 22, 2011, hearing, he had maintained his sobriety, attended 12-step meetings, had a sponsor, and had submitted to weekly random testing. He also continued to be employed and was living with mother and her uncle. After the court terminated reunification services, father continued participating in sobriety treatment, including paying for his own testing, continuing with AA, and obtaining a sponsor. Mother alleged in her amended section 388 petition, that the May 16, 2011, order should be changed because, since then, she had maintained steady employment and stable housing, had remained sober, continued to attend 12-step meetings, and had a sponsor. She also had tested negative for drugs, and visited her children weekly for two hours.

CFS reported in an interim review report filed on September 29, 2011, that father had tested negative since May 2011 and had consistently visited the children. However, father's veracity continued to be a concern. He stated in his section 388 petition that he was a forklift operator, when he actually framed and put together wood pallets. In addition, parents do not own a car and do not live independently. They were living with grandfather, who is an alcoholic and was convicted of eight DUI's.

The social worker reported that mother called on July 11, 2011, to report that grandfather had moved out of his own home and had given her his home. She then conceded grandfather had not passed title to the home to her, but said he moved into his girlfriend's home. Mother acknowledged she and father could not afford a place of their own, but she was looking for work. Mother later called in August 2011, and said she found a temporary job manufacturing hangers. Because of mother and father's persistent lying, the social worker said she had difficulty believing anything they said.

At the contested section 388 hearing on November 8, 2011, the social worker on the case for the past two years, Tracy Raymond (Raymond), testified she had concerns about the children's safety in the event the children were returned to parents' care. These concerns were based on two psychologists' reports in 2007, regarding mother's ability to parent; the incident at Chuck E. Cheese involving J.L.; reports by the children's foster parents that the children were out-of-control during parents' unsupervised visits in 2010; and parents' lack of candor. Parents told Raymond they had been attending AA/NA meetings throughout 2010 but later admitted this was untrue and that they had not attended AA/NA meetings from May through December 2010.

Raymond further testified that the quality of parents' visits and their discipline techniques had improved and mother was not abusing drugs. Mother's sponsor for the past eight months testified that mother was "in the process" of completing the 12-step program. She was only on step two. Raymond was still concerned about father abusing alcohol.

The children were bonded to their foster parents and referred to them as "mom" and "dad." Yecenia Riley (Riley), who supervised visitation, suggested to Raymond that visitation should become more frequent and unsupervised. Raymond did not agree because a .26 hearing had been set and she did not believe increasing visitation would be beneficial at that time. Riley testified she supervised parents' visits with the children every Friday for the past 10 to 11 months. The visits had gone well and the children called mother "mommy" and father "poppy." Separation at the end of visits during the past two or three months had become more emotional, with I.M. crying.

Mother testified that she had not abused drugs or consumed alcohol in over a year. According to mother, grandfather moved out in February 2011, leaving mother, father, and mother's uncle in grandfather's home. Raymond, however, testified that mother had told her in July 2011, that grandfather had just moved out that week. Father also testified that grandfather moved out in July 2011 and father had been paying grandfather rent and for utilities since then. Father also paid for parents' drug testing over the past six or seven months because they wanted their children back.

After hearing testimony and argument during the section 388 hearing, the trial court found parents' circumstances were "changing" but not "changed." In addition, there was no evidence it was in the children's best interests to grant the section 388 petitions. The court then held the .26 hearing and found the children adoptable and terminated parental rights.

### III

#### CHANGED CIRCUMSTANCES PETITION

Parents contend the juvenile court erred in denying their section 388 petitions. They argue that their circumstances changed after the May 2011 order terminating reunification services and setting the .26 hearing.

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a "legitimate change of circumstances" and that undoing the prior order would be in the best interest of the child.

[Citation.] The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion.

[Citation.]” (*In re S.J.* (2008) 167 Cal.App.4th 953, 959-960 [Fourth Dist., Div. Two].)

In evaluating whether parents have met their burden to show changed circumstances, the trial court should consider: (1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.) These factors become less significant once reunification services have been terminated, as in the instant case. This is because, “[a]fter the termination of reunification services, . . . ‘the focus shifts to the needs of the child for permanency and stability’ [citation], . . .” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Here, the juvenile court reasonably found that parents’ circumstances were in the process of changing, but they had not changed enough to delay proceeding with a permanent plan of adoption. “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.] “[C]hildhood does not wait for the parent to become adequate.”” [Citation.]” (*In re Mary G.* (2007) 151 Cal.App.4th 184, 206.)

In the instant case the children were removed from parents as a consequence of very serious problems, which included mother’s long-term drug abuse, mother’s low

functioning abilities, father's drug and alcohol abuse, and parents' poor parenting skills. Mother had abused drugs for over seven years. Parents initially demonstrated an inability to comprehend the seriousness of their substance abuse problems and had difficulty learning basic parenting skills. Parents took the parenting course three times because of their apparent lack of comprehension of basic parenting skills. The record demonstrates that parents require assistance and supervision raising their children. Otherwise the children will be at risk of harm. Although mother's uncle was living with mother and father, there was little, if any, evidence that he would provide sufficient assistance with the care and protection of the children.

Furthermore, mother's history of juvenile dependency court intervention supported a finding that the risk remained that future intervention was likely if the children were returned to parents. During mother's previous juvenile dependency case, CFS provided mother with over two years of reunification services, from 2005 to 2007. The court eventually agreed to return J.L. and I.M. to mother, believing mother had overcome her drug addiction and maternal grandmother would live with mother and assist her in caring for the children. Shortly after the case was closed, mother moved out of grandmother's home, moved in with a new boyfriend (father), became pregnant, relapsed on drugs, and gave birth to R.L. Both mother and R.L. tested positive for drugs, resulting in CFS once again intervening and removing mother's children from her care.

These circumstances demonstrate the seriousness of parents' problems which led to the instant dependency case and the degree of difficulty of overcoming parents' problems. Because of mother's juvenile dependency history, in addition to parents'

history of long-term substance abuse, it was reasonable for the juvenile court to conclude there remained a high degree of risk parents would relapse and not adequately care for and protect the children if returned to parents.

In addition, parents were living in grandfather's home. Grandfather's presence created an adverse environment for parents, since grandfather was an alcoholic, with numerous DUI convictions and a suspended driver's license. The evidence presented at the section 388 hearing demonstrated contrived circumstances in which grandfather supposedly moved out of his own home and was living with his girlfriend, so that the children might be returned to parents. Grandfather owned the home where parents were living. Title was not transferred to mother. Under these circumstances, the risk remained that grandfather would move back into his home, grandfather would continue abusing alcohol, and father and mother would relapse. At the time of the section 388 hearing, mother had only completed step two of a 12-step treatment program. Mother was making progress but the court could reasonably find that she was in the process of changing but her condition did not constitute a changed circumstance.

Although mother and father finally began making a concerted effort to overcome their substance abuse problems in January 2011, this was not until after over a year and a half of services, in which parents did not take their substance abuse problems seriously and lied about attending AA and NA meetings. The record indicates parents lied on so many occasions that social workers and the court could not rely on parents' representations as to their actual circumstances. For instance, parents lied to Raymond and the court that they had been attending AA/NA meetings throughout 2010 but later

admitted this was untrue. They had stopped attending AA/NA meetings from May through December 2010. In addition, mother's testimony indicated that she lied about being present when J.L. was seriously injured at Chuck E. Cheese and as to when grandfather moved out of his home. Mother further acknowledged she misinformed the social worker that grandfather did not have a criminal record. She claimed she did not know he had a drinking problem or had been arrested for drinking and driving, even though she had lived with grandfather for many years. Father also lied that he was employed as a forklift operator.

Mother argues that CFS relied on outdated information and reports provided by two psychiatrists in 2007, stating that mother needed another adult assisting her in caring for her children. But there was evidence establishing that mother's cognitive abilities had not changed and, although parents' parenting skills had improved, parents continued to demonstrate an inability to parent adequately on their own.

The social worker reported in the status review report filed in March 2011, that it was clear "that the mother has been battling with a 7-10 year drug addiction and this addiction coupled with the mother's internal processing difficulties, appears to exacerbate her ability to demonstrate sound insight and judgment." The social worker concluded that, even assuming mother remained sober, parents "have demonstrated a profound lack of parenting skills throughout this case. . . . While it is true the parents have shown some improvement in the past three months, the [social worker] is concerned about the parents['] ability to sustain change overtime, without direct, concrete, instruction from those who have provided professional supervision." The social worker noted that when

supervision was withdrawn for only a short time, parents were unable to control I.M. and J.L. was seriously injured. At the section 388 hearing, the social worker, Raymond, testified regarding mother's cognitive functioning, that based on Raymond's relatively recent observations, mother continued to lack adequate insight and judgment.

The juvenile court could reasonably conclude that under these circumstances, there was a significant likelihood that parents would relapse, with the family returning to the juvenile dependency court a third time. The benefits of adoption of the children in their current stable prospective foster home outweighed the substantial risk of parents relapsing and unable to adequately care for and protect the children.

Mother argues that her attempt to provide evidence supporting her section 388 petition was undermined by CFS's deliberate failure to provide crucial information to the juvenile court. Mother notes that Riley, who supervised visitation, had recommended in July and October 2011 reports, more frequent and unsupervised visitation to further the children's best interests. This, she argues, shows that parents had a close and beneficial relationship with the children, and refutes the juvenile court's finding that there was no evidence that granting the section 388 petitions was in the children's best interests. Mother also argues that CFS's failure to mention Riley's recommendations in its status review reports constituted deliberate concealment of important information, which was not disclosed to the juvenile court until Riley and Raymond's testimony during the hearing on the section 388 petitions.

Regardless of whether Raymond should have mentioned in her status review reports that Riley had recommended more liberal visitation, such omission was harmless

since the information was disclosed during the hearing on the section 388 petitions and there was substantial evidence supporting the trial court's finding that, even though parents had a loving relationship with the children, there was a substantial risk that parents would be unable to adequately care for and protect the children if the children were returned to parents' care.

In addition, the children had a close bond with their prospective adoptive foster parents, with whom they had lived since the inception of the instant juvenile dependency proceedings in July 2009. At the time of the hearing on the section 388 petitions in November 2011, the children had lived with their prospective adoptive family for over two years. I.M. was almost two years old when she was removed from parents' care, and had lived in her prospective adoptive foster home for over two years, which was a substantial portion of her life. R.L. had lived with his prospective adoptive parents almost his entire life (other than the first month after his birth) and was placed with I.M. The children were well cared for and happy in their prospective adoptive home. Under the totality of such circumstances, the juvenile court could reasonably find that it was not in the children's best interests to remove them from their prospective adoptive family and place them with parents.

#### IV

#### THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

Mother contends the juvenile court erred in rejecting the beneficial parental relationship exception to adoption (§ 366.26, subd. (c)(1)(B)(i)). This exception is often raised but rarely applies. (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5,

disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413.) While it can have merit in an appropriate case (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301), this is not such a case.

Generally, at a .26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (§ 366.26, subs. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions (§ 366.26, subs. (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.) “The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child,[] and (4) the child’s particular needs. [Citation.] While the exact nature of the kind of parent/child relationship which must exist to trigger the application of the statutory exception to

terminating parental rights is not defined in the statute, the relationship must be such that the child would suffer detriment from its termination. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467.)

“[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.) “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.]” (*Id.* at p. 937.)

“We must affirm a trial court’s rejection of these exceptions if the ruling is supported by substantial evidence. [Citation.]” (*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. [Citation.]” (*In re B.D., supra*, 159 Cal. App.4th at p. 1235.) Because mother had the burden of proof, we must affirm unless there was “indisputable evidence [in her favor] no reasonable trier of fact could have rejected . . . .” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

Parents claim they have a significant parent-child bond with their children, they love their children, their children view mother and father as their parents, and their relationship is not insignificant or easily overlooked upon adoption of the children. Nevertheless we conclude parents have not established that continuation of their relationship with the children would outweigh the benefit to the children of a permanent adoptive home. Despite evidence that parents consistently visited the children and their visits went well, parents have not established that “severing the existing parental relationship would deprive the [children] of ‘a substantial, positive emotional attachment such that the child would be greatly harmed.’” (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1235.)

The record shows that parents were at substantial risk of a substance abuse relapse. Mother had a history of juvenile dependency court intervention because of her long-term abuse of drugs and relapsing shortly after her children were returned to her. There is also substantial evidence parents, particularly mother, are incapable of adequately caring for the children without assistance and oversight by a third party. This is significant because the children, as young children, lack communicative skills necessary to convey their needs and seek protection from harm if placed in unsafe situations, such as in the event parents relapse. Furthermore, R.L. has never lived with parents. He has always lived with his prospective adoptive family. I.M. lived with parents for the first two years of her life. The rest of her life (over two years) she has lived with her prospective adoptive family and R.L. The children have formed strong bonds with their prospective adoptive family, and their relationship with parents over the past two years has diminished.

Under such circumstances, the benefit of continuing parents' relationship with the children is not enough to justify impeding the children from being placed in a safe, stable, permanent adoption home. We thus affirm the juvenile court's rejection of the beneficial parental relationship exception. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 809.)

V

DISPOSITION

The judgment is affirmed as to both mother and father.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P.J.

MILLER  
J.