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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re E.M., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

G.N.,

Defendant and Appellant.

E055028

(Super.Ct.No. RIJ119510)

O P I N I O N

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

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Pamela J. Walls, County Counsel, and Lilia Wilkerson and Carole A. Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

## I. INTRODUCTION

Appellant G.N. (Mother) appeals from the juvenile court's October 19, 2011, order terminating parental rights to her then nine-year-old daughter E.M. and selecting adoption as E.M.'s permanent plan. Mother claims that insufficient evidence supports the court's determination that the parental benefit exception to the adoption preference did not apply, and that the court should have instead selected guardianship or long-term foster care as E.M.'s permanent plan. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B).)<sup>1</sup> We reject this claim and affirm the challenged order.

## II. FACTS AND PROCEDURAL HISTORY

To best illuminate the nature and quality of Mother's relationship with E.M. at the time of the section 366.26 hearing, we outline the dependency proceedings from their inception, including the events preceding E.M.'s dependency, Mother's participation in her case plan, and the nature and quality of Mother's visits and relationship with E.M.

### A. *Events Preceding E.M.'s Dependency*

E.M. was born in June 2002 and lived with Mother most of her life until March 23, 2010, when she was detained in foster care. Mother had an extensive history with child protective services involving E.M. and her two older sons. Before detaining E.M.,

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

respondent Riverside County Department of Public Social Services (DPSS) attempted to provide Mother with preplacement, preventative services following a January 31, 2010, referral.

According to the referral, six or seven people were living in Mother's one-bedroom apartment with Mother and E.M., and there was "constant traffic in an[d] out of the apartment throughout the day and night." The referral further alleged that Mother used drugs and had E.M. go outside "when her drug friends come over." Mother had not paid rent in two months and was in the process of being evicted.

Mother denied the allegations and claimed the only people living in her apartment were E.M., herself, and her boyfriend. Mother's adult son occasionally stayed in the apartment, and her minor son was living with an aunt. E.M.'s father was not living in E.M.'s household and had not seen E.M. for over a year, though he claimed he kept in contact with E.M. by telephone.

In 2005, Mother's fourth child, her then 12-year-old daughter, died tragically in a house fire. According to Mother, the daughter's friend was spending the night in Mother's home and brought a long-stick candle, which fell during the night, igniting the fire. The friend left the home without waking the daughter. Mother was able to get E.M. out of the home safely, but she said her life had not been the same since the death of her older daughter. Before the fire, Mother had stable employment and was able to provide for her family, but afterward she entered into a depression, lost her job, and her credit score decreased. Mother had not been evaluated for depression and reported never taking

any medications for depression. She had received counseling after the fire through the GAIN program.

The social worker discovered that Mother's "live-in" boyfriend had an extensive criminal history, was on parole, and admitted using marijuana, but denied using any other drugs or selling any drugs out of Mother's apartment. Mother claimed her boyfriend did not use drugs and only drank socially. She also denied using drugs or having a history of using drugs, and said she would not subject E.M. to harm "in any way." The boyfriend said he would "stay out" of Mother's apartment.

In February 2010, E.M. was dressed "clean and appropriately" but had numerous unexcused "tardies" at school and, according to school personnel, was "usually picked up late" by Mother or Mother's boyfriend. There was a time when the school was unable to contact Mother. The social worker told Mother that her boyfriend was not an appropriate caregiver for E.M. and E.M. should not be left with him unsupervised. The boyfriend initially agreed, but subsequently failed, to submit to on-demand drug testing. On March 11, Mother tested negative for all substances, but her creatinine level was 65.8.

Mother claimed she had not paid the rent on her apartment because her landlord refused to fix several problems. On March 4, Mother reported that her utilities had been turned off, and the social worker told her that E.M. could not live in her apartment without utilities. Mother agreed that she and E.M. would stay with E.M.'s maternal grandmother until Mother obtained approval to move to another residence. Mother's current landlord wanted her to move out.

On March 17, the social worker discovered that E.M. had been staying in Mother's apartment, without utilities. Mother's boyfriend was also still staying in the apartment and picking E.M. up from school. The maternal grandmother said that E.M. had stayed with her only one night since March 4, and would "start[] 'whining'" for Mother because she was so attached to her.

Thus, on March 17, Mother signed a "safety plan" agreeing that (1) she and E.M. would move in with the maternal grandmother until she was able to get another apartment, (2) she would not allow her boyfriend to have unsupervised contact with E.M., and (3) she would submit to an on-demand drug test on March 18. The maternal grandmother also signed the safety plan and agreed to contact DPSS if Mother failed to comply with the plan. Mother was told that the safety plan was a "preplacement preventive measure" and her failure to comply with the plan would result in court intervention. The social worker transported E.M. to the maternal grandmother's home.

On March 22, the maternal grandmother reported that Mother left her home with E.M. on March 19 after receiving "her income tax." The maternal grandmother said E.M. was "rebellious" and she did not want to be responsible for her. Also on March 22, a tenant at Mother's apartment complex reported there were several individuals in Mother's apartment, all smoking drugs, in the presence of Mother and E.M. At that point, DPSS decided to detain E.M. out of Mother's custody. A March 24 drug test showed Mother tested positive for opiates on March 18, but had not reported having a prescription pain medication.

*B. The Dependency Proceedings (March 2010-October 2011)*

1. Jurisdiction and Disposition (April 2010)

On March 25, 2010, DPSS filed a petition alleging Mother had “demonstrated a limited ability to protect” E.M., placing E.M. at risk of harm. (§ 300, subd. (b).) At a contested jurisdictional/dispositional hearing on April 27, the court found the allegations of an amended petition true. The court found Mother had failed to benefit from preplacement, preventative services, including “counseling referrals, parenting training, public assistance services, substance abuse treatment, on demand drug testing and the development of a safety plan . . . .” The court also found that Mother violated the safety plan by allowing E.M. to live in her apartment for three weeks without utilities and had placed E.M. at additional risk of harm by continuing to expose her to Mother’s live-in boyfriend, who abused drugs, had an extensive criminal history, and was arrested for possessing methamphetamines on April 4.

E.M. was declared a dependent and continued in confidential foster care. The court ordered reunification services and supervised visitation for Mother and E.M.’s father.<sup>2</sup>

Mother’s case plan required her to complete general counseling, parenting education, a substance abuse program, substance abuse testing, a psychological

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<sup>2</sup> The court found that E.M.’s father was not a member of E.M.’s household and failed to maintain consistent contact with E.M. or provide for E.M.’s needs. E.M.’s father stopped visiting E.M. and failed to stay in contact with DPSS, and his services were ultimately terminated. He is not a party to this appeal.

evaluation, and a medical evaluation. From the outset, it was unclear whether Mother would comply with her case plan. She missed three drug tests during April 2010. Before the April 27 hearing, she was referred to counseling, parenting education, and a substance abuse program, but refused to discuss her case plan with the social worker.

## 2. The Six-month Review Hearing (November 2010)

In a November 2010 six-month status review report, DPSS described Mother as “late to start” with her case plan. She did not attend her referred counseling services, but completed a 45-day inpatient treatment program in September 2010 and received counseling services through that program. She was “enjoy[ing]” a parenting course but was unable to explain how she was benefitting from the course. She tested negative for all substances on October 28.

Mother completed a psychological evaluation on October 21. She was 90 minutes late to her first appointment and 70 minutes late for her second. The psychologist, Dr. Robert Suiter, noted Mother appeared unconcerned that she was late even though she was being evaluated for having E.M. returned to her. Mother presented with “a combination of affective difficulty and very significant personality traits reflective of a personality disorder.” Mother frequently contradicted herself, could not adequately or coherently describe the reason E.M. was removed from her care, and was “remarkably prone to minimize or rationalize any difficulties she has had in her living situation or with men she has been living with.”

In the opinion of Dr. Suiter, Mother's affective difficulty and personality disorder "seriously impact upon her abilities to adequately respond to intervention strategies making it extremely unlikely she will benefit from such interventions." Dr. Suiter believed it would be "detrimental" to E.M. to return her to Mother's care.

DPSS described E.M. as mentally and emotionally stable, very outgoing, and kind. She was benefiting from counseling and had shown "great improvement" at her new elementary school. Her new foster mother, with whom she had been living since September 30, was helping her daily with her homework.

Since March 26, Mother had consistently attended her weekly supervised, two-hour visits with E.M. Initially, Mother brought friends and different men to the visits even though she was instructed not to. The friends and Mother engaged in "inappropriate conversation[s]" with E.M., such as telling her that Mother planned to kidnap her. The foster mother also received telephone calls from friends of Mother, saying they were family members and wished to speak with E.M.

After completing her inpatient program, Mother stopped bringing friends with her to the visits, and during October she maintained "consistent and appropriate supervised visitation" with E.M. Still, Mother did not attend a scheduled appointment to discuss the possibility of unsupervised visits, did not request a follow up appointment, and did not request unsupervised visits with E.M.

Mother also refused to disclose her living arrangements to the social worker until November 3, and the social worker was still concerned about the company Mother was

continuing to keep, which was part of the reason for E.M.'s removal. Following the completion of her inpatient program, Mother was instructed to move in with her mother or move into a sober living home.

Mother was living in a sober living home with a man named Will whom she had been dating for two months and described as her fiancé. It was reported to DPSS that after Mother completed her inpatient program in September, she “went back to the ‘riverbottom’ in Riverside, a gathering spot that she used to frequent with her friends before her case began.” The social worker understood that Mother met Will at the “riverbottom.”

### 3. The 12-month Review Hearing (June 2011)

At the contested 12-month review hearing on June 21, 2011, the court terminated Mother's services and set a section 366.26 hearing. The court denied Mother's request for further services and rejected her claim that she had not been provided with adequate services to address her psychological issues.

Since April 22, 2011, Mother had been living in “transitional living apartments” with another resident in the program. She lived with Will in a sober living home from October 2010 to February 2011, then moved in with her mother, then moved into the transitional living apartments. Will was still her fiancé, and DPSS discovered he, too, had an extensive criminal history. Mother expressed no understanding of the danger this presented to E.M. Will called DPSS and “yelled in a threatening tone” to dispute the

results of his criminal records check. Mother was receiving \$200 in monthly food stamps and said Will also helped support her with his \$1,486 in monthly income.

Mother's counselor described her as "very depressed with limited coping skills," and as "very focused" on marrying Will. When the subject of "unhealthy men" or Will came up, Mother was evasive and secretive with her counselor. Mother was recently diagnosed with bipolar disorder, but was not taking appropriate medication to treat it. The social worker believed Mother had not benefited from her counseling, and continued to place the needs of her "questionable friends and men" above the needs of E.M.

Mother was continuing to exhibit "poor boundaries" with E.M. during visits. She discussed things with E.M. that made E.M. uncomfortable and that were inappropriate to discuss. Mother told E.M. that Will grabbed her by the neck, would not let her go, and pushed her into another room. E.M. was "distracted" by this and said Mother had told her this before. Mother also had E.M. pose with Will for a photograph, which made E.M. "very uncomfortable." After being redirected, Mother stopped bringing Will to the visits.

Nevertheless, in May 2011, E.M.'s foster mother reported that E.M. acted "different and strange" and was fidgety, unorganized, and unable to focus or concentrate following her visits with Mother. During one visit, the foster mother overheard Mother asking E.M. whether she would be "excited to go home" with Mother or the maternal grandmother, and this made E.M. "very uncomfortable and cause[d] issues for her." During an unsupervised visit E.M. had with her father, the father allowed Mother to

speak with E.M. on the telephone, and Mother told E.M. she had a room set up for her. This made E.M. “very anxious.”

In therapy, E.M. was “open[ing] up more about her concerns and fears.” E.M. had only recently revealed that she had been sexually abused by two of Mother’s former boyfriends. She feared returning to Mother’s care but also feared disappointing Mother if she told her she wanted to stay with her caregiver. E.M. began therapy as a “very parentified” child who focused on the needs of her parents, but over the previous 16 months she had evolved from a “very scared and closed girl, to a very open, happy, and confident girl,” who was involved in many activities and was excelling in school. E.M. expressed a desire to remain with her foster mother, where she felt safe and secure. E.M.’s therapist believed that continued visits with Mother were detrimental to E.M.’s mental health.

#### 4. Mother’s Section 388 Petition (October 2011)

On October 18, 2011, the day before the section 366.26 hearing, Mother filed a section 388 petition requesting that the court modify its June 2011 order terminating her services, grant her six months’ additional reunification services, and vacate the section 366.26 hearing. The court heard and denied the petition immediately before conducting the section 366.26 hearing on October 19.

In support of her section 388 petition, Mother presented evidence that she was still living in the MFI transitional living apartments where she had been living since April 22. The MFI program provided sober living housing for six months to one year for single

mothers with children. No men were allowed in the facility and residents were not allowed to have visitors in their apartments.

Residents were required to obtain employment within 90 days, follow all rules, attend 12-step meetings four times weekly, and take random drug tests. Mother had followed all of the rules of the program, tested negative on all drug tests, provided proof of job searches, and was enrolled in the UEI college for medical billing and insurance coding in an effort to find employment.

Mother also presented evidence of a September 18 psychiatric evaluation indicating that her thoughts were “goal directed,” her attention and concentration were “good,” her memory, judgment, and insight were “fair,” and she was not a risk of danger to herself or others. The evaluation also indicated that Mother’s drug of choice was marijuana or “THC” and she last used the drug in July 2010. Mother also presented photographs of herself and E.M., showing that she and E.M. were closely bonded.

In considering the petition, the court also considered DPSS’s section 366.26 report filed on September 28, 2011. In denying the petition, the court found that Mother’s circumstances had not changed, but commended her for attempting to change her circumstances. (§ 388.) The court also concluded that E.M.’s best interests would not be served by granting the petition. (*Ibid.*)

##### 5. The Section 366.26 Hearing (October 2011)

At the section 366.26 hearing, DPSS recommended terminating parental rights and placing E.M. for adoption, and submitted the matter based on its recommendation and its

September 28 review report. The report described the history of the proceedings as outlined above, and described E.M.'s mixed feelings about being adopted. E.M. was age nine and in the fourth grade.

On August 30, the social worker spoke to E.M. at her school. E.M. expressed a fear that Mother would not be able to protect her and she would not know what to do if she needed help. She felt safe with her caregiver, whom she said had taken good care of her and was someone she could "count on," but she did not want to lose contact with either of her parents. She loved her parents and was concerned that she would not know how to find them when she was an adult. She did not believe telephone contact with her parents was sufficient because she "want[ed] to make sure that her parents [were] okay."

E.M.'s therapist still believed that continued visits or contact with Mother was "very detrimental to the overall mental health and stability" of E.M. The social worker believed that adoption and limiting contact with her parents would be beneficial to E.M. because it would allow her to "grow up in a stress free environment" and "be a little girl and not the parent."

Mother objected to terminating parental rights and selecting adoption as E.M.'s permanent plan. Mother's counsel pointed out that E.M. did not want to lose contact with Mother, and asked the court to place her in long-term guardianship so she could maintain a relationship with Mother. In the alternative, counsel asked the court to send the case to mediation for a postadoption contract. Counsel argued that if parental rights were terminated and E.M. never heard from Mother again, E.M. would have "lingering

questions” and would “always want to know” Mother’s whereabouts and welfare. A mediated, postadoption contract would safeguard E.M.’s “emotional wellbeing,” counsel argued.

In response, county counsel emphasized that E.M. needed permanency, and was living in a home where she felt safe and protected. The caregiver was willing to send photographs to Mother and allow occasional telephone calls, but given the difficulties E.M. was having following visits with Mother, county counsel argued it would be in E.M.’s best interest not to refer the case for a postadoption contract and allow the prospective adoptive caregiver the option of terminating all contact if appropriate.

At the conclusion of the hearing, the court found that terminating parental rights would not be detrimental to E.M. because none of the exceptions to the adoption preference applied (§ 366.26, subd. (c)(1)(A), (B)), and accordingly terminated parental rights and ordered E.M. placed for adoption. The court ordered preference to be given to the adoption application of E.M.’s current caretaker over any other application.

### III. DISCUSSION

Mother claims that insufficient evidence supports the court’s determination that the parental benefit exception to the adoption preference did not apply, and the order terminating parental rights and placing E.M. for adoption must therefore be reversed. We disagree.

### A. *Applicable Legal Principles*

At a permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Permanent plans include adoption, guardianship, and long-term foster care. (*In re S.B.* (2008) 164 Cal.App.4th 289, 296.) “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Adoption necessarily involves terminating the legal rights of the child’s natural parents, but guardianship and long-term foster care leave parental rights intact. (*Id.* at p. 574.) “Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.)

To avoid termination of parental rights and adoption, a parent has the burden of showing that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26 subdivision (c)(1)(A) or (B) apply to the child. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469 (*Scott B.*); *In re Celine R.* (2003) 31 Cal.4th 45, 53.) The exceptions “merely permit the court, in *exceptional circumstances* (*In re Jasmine D.* [(2000) 78 Cal.App.4th 1339,] 1348-1349), to choose an option other than the norm, which remains adoption” (*In re Celine R., supra*, at p. 53). Under the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)), the court must “find[] a *compelling reason* for determining that termination [of parental rights] would be detrimental to the child” (§ 366.26, subd. (c)(1)(B), italics added; *Scott B., supra*, at p. 469).

The parental benefit exception applies when two conditions are shown: the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i); *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) In order to show that the child would benefit from continuing the relationship with the parent, the parent “must do more than demonstrate . . . an emotional bond with the child”; the parent “must show that he or she occupies a ‘parental role’ in the child’s life.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.)

The parent must show that the parent-child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs. [Citation.] When the benefits from a stable and permanent home provided by adoption outweigh the

benefits from a continued parent/child relationship, the court should order adoption.’  
[Citation.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349-1350 (*Jasmine D.*)). In  
all section 366.26 proceedings, the court “shall consider the wishes of the child and shall  
act in the best interests of the child.” (§ 366.26, subd. (c)(1)(h)(1).)

### B. *Standard of Review*

In considering a claim that insufficient evidence supports the juvenile court’s  
determination that the parental benefit exception did not apply, we review the evidence in  
the light most favorable to the prevailing party, giving it the benefit of every reasonable  
inference and resolving all conflicts in support of the court’s ruling. (*In re Autumn H.*,  
*supra*, 27 Cal.App.4th at p. 576.) If substantial evidence supports the court’s  
determination, we must affirm. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 298.)

That said, appellate courts have variously applied the substantial evidence test and  
the abuse of discretion test in considering challenges to juvenile court determinations that  
the parental benefit exception to termination did not apply. (*Scott B.*, *supra*, 188  
Cal.App.4th at p. 469.) There is little, if any, practical difference between the two.  
(*Ibid.*) As explained in *Jasmine D.*: “[E]valuating the factual basis for an exercise of  
discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad  
deference must be shown to the trial judge. The reviewing court should interfere only  
“if [it] find[s] that . . . no judge could reasonably have made the order that he did.’ . . .”  
[Citations.]” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

But as the court in *Jasmine D.* further explained, the abuse of discretion standard has traditionally been applied to custody determinations and “seems a better fit” for reviewing a juvenile court’s determination that the parental benefit exception did not apply. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) This is so because the court must find “a compelling reason” for applying the exception, and this is “a quintessentially discretionary determination.” (*Ibid.*) As we explain, under either standard the juvenile court here properly determined that the parental benefit exception did not apply.

### C. Analysis

DPSS does not dispute that Mother maintained regular visitation and contact with E.M. Nonetheless, substantial evidence shows, and the court reasonably determined, that the benefits E.M. would realize from being adopted outweighed the benefits she would realize from continuing her relationship with Mother.

E.M. felt safe, secure, and well cared for with her prospective adoptive mother. She had grown from an insecure and frightened child to a confident, outgoing, and kind nine-year-old child. She had also shown great improvement in school and was participating in many activities. Still, E.M. was very “parentified” and worried about the needs of Mother, whether Mother would be “okay,” and whether she would be able to find Mother when she was an adult if she were adopted and lost contact with Mother. For this reason, E.M. was conflicted about being adopted. She said she wanted to be adopted but also wanted to live with Mother, even though she did not believe Mother would be able to protect her. In the opinion of E.M.’s therapist, E.M.’s continued visits with

Mother were detrimental to E.M.'s mental health. The visits were causing E.M. distress and discomfort, and she was fidgety and unable to focus following the visits.

Despite the progress Mother had made in addressing her substance abuse problem and completing her case plan at the time of the section 366.26 hearing, Mother had a lengthy history of placing the needs of herself and her various boyfriends, two of whom had sexually abused E.M., above the needs of E.M. There was ample reason to believe that Mother's behavior would not change. During visits with E.M., Mother shared inappropriate information with E.M., causing E.M. much distress and discomfort. The psychologist who evaluated Mother did not believe she was able to benefit from intervention.

Mother relies on *Scott B.* and *In re S.B.* in which orders terminating parental rights were reversed because the courts erroneously determined that the parental benefit exception did not apply. (*Scott B.*, *supra*, 188 Cal.App.4th at p. 472; *In re S.B.*, *supra*, 164 Cal.App.4th at pp. 300-301.) In both cases, substantial evidence showed the children would be "greatly harmed" if parental rights were terminated. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) That is not the case here.

*Scott B.* involved an 11-year-old boy, Scott, who had "substantially disabling" autism, ADHD (attention deficit hyperactivity disorder), and needed special education services. (*Scott B.*, *supra*, 188 Cal.App.4th at pp. 455, 471.) Scott was removed from his mother's care at age seven due to physical abuse by his maternal grandmother, violence between his mother and her brother, unsanitary conditions in the home, and Scott's poor

hygiene. (*Id.* at p. 455.) Before removal, Scott was “very withdrawn, practically nonverbal,” and did not use words to show feelings but “growl[ed] and thrash[ed] about,” “struggled with social interaction,” failed to regularly attend school, and “lacked adequate toilet training.” (*Id.* at p. 457.) In foster care, Scott became “quite verbal and expressive,” was comfortable with adults and other children, took care of his hygiene, and did well in school. (*Id.* at pp. 457-458.)

During weekly visits, Scott’s mother would share inappropriate information with him and his behavior would regress to growling and whining. (*Scott B., supra*, 188 Cal.App.4th at pp. 458-459, 461.) Following the visits it would take time for Scott to readjust in his foster home. (*Id.* at p. 458.) Scott’s mother was unable to adequately care for him, but Scott was very emotionally attached to her. (*Id.* at pp. 458-459.) During court hearings, he would go directly to his mother and sit next to her. (*Id.* at p. 459.) After his mother had surgery due to a serious medical condition, Scott said he no longer wished to be adopted. He tried to run away from his foster home several times, and was losing sleep because he worried about his mother. (*Id.* at pp. 462-463.)

At the section 366.26 hearing, Scott spontaneously told the court he wanted to be adopted so that he, his mother, and his foster family “could all ‘go somewhere fun.’” (*Scott B., supra*, 188 Cal.App.4th at p. 466.) It did not appear that Scott understood that if he were adopted, his adoptive parents could cut off his contact with his mother. (*Id.* at pp. 466-468.) Also, the CASA (court-appointed special advocate) had repeatedly

reported that Scott had a “very close relationship” with his mother, and disrupting that relationship would be detrimental to Scott. (*Id.* at pp. 465, 471.)

In reversing the order terminating parental rights, the court reasoned: “Mother provides stability to Scott’s life. That is what adoption is supposed to do, but it may not in this case. Given Scott’s strong emotional attachment to Mother, his continued precarious emotional state, and his history of regressing and running away when he is stressed, there is a very good chance that he will have a meltdown if his usual frequent visitation with Mother does not continue. The only way to avoid that serious emotional and developmental setback and ensure that Scott’s usual visitation with Mother continues is by court order.” (*Scott B.*, *supra*, 188 Cal.App.4th at p. 472.) The court agreed with the department’s statement that “‘what is at stake is the fundamental question of whether Scott will continue to thrive, as he has done since being placed with [his foster mother].’ Termination of parental rights is unnecessary given that a legal guardianship will provide Scott with stability in his life.” (*Ibid.*, fn. omitted.)

Here, however, the juvenile court reasonably determined, and substantial evidence showed, that terminating parental rights and discontinuing Mother’s relationship with E.M. would not be detrimental to E.M. “To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) The parent in *Scott B.* met this standard, because all of

the evidence indicated that Scott was at risk of suffering a serious emotional and developmental setback if he were no longer able to see his mother. This is not the case with E.M.

Unlike Scott, E.M. is not an emotionally fragile child with social difficulties and developmental special needs. She is very confident and outgoing, and emotionally stable. Unlike Scott, there is no indication that E.M. will suffer an emotional or developmental setback if parental rights are terminated and E.M. loses contact with Mother. And unlike Scott, E.M. does not have a positive emotional attachment to her Mother, or even an emotional need for her Mother. Instead, she worries that her Mother needs her. E.M.'s therapist believed that continued visits with Mother were detrimental to E.M.'s mental health. All indications were that the termination order would allow E.M. to continue to thrive, enjoy her childhood, and stop worrying about the welfare of Mother.

*In re S.B.* involved a nine-year-old girl, S.B., who was removed from her parents' custody because their substance abuse impeded their ability to care for her. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 293.) S.B. had a very close and "positive" relationship with her father, who was unable to adequately care for or reunify with her due to his physical and emotional health problems. (*Ibid.*) The father stayed sober and visited S.B. three days a week. (*Id.* at pp. 293-294.) At the section 366.26 hearing, a social worker testified that S.B. had a "consistent and positive" relationship with her father, and a psychologist who completed a bonding study testified that S.B. was at risk of harm if she were to lose her relationship with her father. (*In re S.B.*, *supra*, at pp. 295-296.)

*In re S.B.* is distinguishable from the present case because, unlike E.M., S.B. had a *positive* emotional attachment to her father. E.M.'s emotional attachment to Mother is not positive; rather, it is based on E.M.'s feelings of responsibility for her Mother's welfare. Additionally, E.M. is a strong and confident child, and there is no evidence she will be greatly harmed if parental rights are terminated. (*In re Angel B., supra*, 97 Cal.App.4th at p. 466.)

Thus here, there was no *compelling reason* to apply the parental benefit exception. (§ 366.26, subd. (c)(1)(B).) To the contrary, substantial evidence shows, and the juvenile court reasonably determined, that the benefits E.M. would realize from being adopted outweighed the benefits she would realize from continuing her relationship with Mother. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

#### IV. DISPOSITION

The order terminating parental rights and placing E.M. for adoption is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

HOLLENHORST  
Acting P.J.

RICHLI  
J.