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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

E055306

(Super.Ct.No. RIJ120607)

OPINION

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

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

I. INTRODUCTION

Defendant and appellant M.S. (Mother) is the mother of S.P., G.P., and M.P., the subjects of this juvenile dependency case. She appeals from the trial court's denial of her request to change a court order made pursuant to Welfare and Institutions Code section 388,¹ and an order terminating her parental rights as to S.P., G.P., and M.P. She contends the court abused its discretion when it: (1) denied her section 388 petition; and (2) found the beneficial parental relationship and sibling benefit exceptions to the adoption preference did not apply. We reject these arguments and affirm the court's orders.

II. SUMMARY OF FACTS AND PROCEDURAL HISTORY

A. *Initiation of Proceedings and Detention (August 2010-November 2010)*

Mother and Mr. P. are the parents of S.P., G.P., and M.P. At the time plaintiff and respondent Riverside County Department of Public Social Services (DPSS) filed a juvenile dependency petition in November 2010, the children were ages seven, six, and three, respectively. Mother is also the mother of A.M., whose father lives in Selma, California. A.M. was 10 years old in November 2010. Mother, Mr. P., and the four children were living together when this case began.

In August 2010, DPSS received a referral alleging that Mr. P. had dragged A.M. across the floor by her leg and arm when A.M. did not take out the trash fast enough. There was also a report that Mr. P. "hits the child all the time," and that the parents

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

engage in domestic violence. Social workers were unable to contact the family at that time.

In October 2010, DPSS received another referral that Mr. P. hit A.M. with an open hand and made her cry. When she did not stop crying, Mr. P. and Mother took the four children to a river, where Mr. P. hit A.M. several times with a belt. Six-year-old S.P. was also spanked with the belt because she was sucking on her arm and would not stop.

In November 2010, a social worker met with A.M. at her school. A.M. described how Mr. P. would take the children to an unused building by the river so neighbors could not hear them crying. There, Mother and Mr. P. hit the children with a studded belt, bruising them. A.M. described one occasion in which she spilled some water on the floor. When M.P. slipped on the water, Mr. P. became angry and pushed A.M. to the floor, making her cry. Mr. P. told A.M. that if she was not quiet, he would put her face on a hot tortilla pan. Mr. P. put the pan close to her face as if he was going to burn her. Mother told A.M. to be quiet or she would take her to the river and hit her.

A.M. also told the social worker that Mother and Mr. P. will “get mad at the kids very easy and will hit them for little things.” Most recently, Mother pulled her by the hair, put her head on the kitchen table, and said she was going to beat A.M. if she told anyone what was happening at home. She also said that Mother and Mr. P. “have had problems fighting with each other.”

A.M. told the social worker that Mr. P. “likes to ‘play games’” by rubbing her legs and “inside her private parts with his hand.” He does this to her younger sisters as well.

She also said that Mother rubs the children in the same way while Mr. P. watches, and that Mother and Mr. P. will make the siblings rub each other while both parents watch. The parents also make the children insert their fingers into Mother's buttocks.

The social worker also met with seven-year-old S.P. S.P. said that Mother and Mr. P. will hit them at the river so no one will hear them. They will also fight and hit each other. S.P. also described how Mother and Mr. P. rub her private parts and put their fingers in her.

The social worker took the four children into protective custody and placed them in foster care.

The children were examined and all found to have lice. M.P., the youngest, also had an unidentified rash on her entire body.

A social worker interviewed Mother. Mother admitted to having physical fights with Mr. P. She said Mr. P. has a history of using methamphetamine and suspects "he is doing drugs." She also admitted spanking the children with a belt "to educate them," and to taking the children to the river so the neighbors would not hear them. When the social worker asked Mother about the children's report of sexual abuse, she began crying and would not answer any more questions.

Mr. P. also admitted to having fights with Mother and to taking the children to the river because "it is isolated and the neighbors can hear the kids cry." He said that he and Mother take turns hitting the children "for their own good." When asked about the allegations of sexual abuse, Mr. P. said the kids will sit on top of him and he will "tickle

them from the waist al[l] the way down.”” He admitted touching the children’s buttocks, but did not answer the social worker when asked about touching their vaginas. He also admitted telling the children to put their fingers in Mother’s buttocks. When asked about drug use, Mr. P. was initially evasive, but then said he has been using methamphetamine.

DPSS filed a juvenile dependency petition concerning the four children on November 10, 2010. Based on the conduct described above, DPSS alleged juvenile court jurisdiction under section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (d) (sexual abuse). In addition, an allegation of severe physical abuse of a child under five years old, under section 300, subdivision (e), was made as to M.P.

The court detained the children on November 12, 2010. The court ordered that no visits take place between Mother or Mr. P. and the children until ordered otherwise.

B. Jurisdiction and Disposition (December 2010-February 2011)

A social worker met with Mother on November 23, 2010. Mother was sad and crying because she missed her children. The social worker told her that the children were doing well, but M.P. was a little sad because she missed her Mother. Mother said she is very attached to the children and has always been with them.

In a jurisdictional/dispositional report filed in December 2010, DPSS reported that the children feel comfortable and safe in their foster home. A.M. and S.P. indicated they did not want to return to their parents’ care and did not wish to have visits with them. G.P. said she did not want to return home, but would like to have visits with the parents. M.P. was too young to provide information.

The report summarizes interviews of A.M. and S.P. by a member of the Riverside Child Assessment Team (RCAT). A.M. stated that the physical abuse began when she was three years old. She reported that she had been hit with a brown belt with silver stars on it, and that Mother had said she hit them because she loved them.

Regarding sexual abuse, A.M. told the interviewer that Mr. P. would tell her to “stick her finger up her [M]other’s ‘butt.’” When A.M. told Mr. P. she did not want to, Mr. P. said, “then I will put my finger up yours.” She reported that Mr. P. “would touch her ‘top parts’ (breasts), ‘privates’ (vagina area), [‘]and my butt.’” Mr. P. taught “‘the baby’ (M.P.) to stick her finger in the [M]other’s ‘butt.’” Mr. P. also told A.M. “that soon her [M]other would be too old for him and she would be with him.”

S.P. told the RCAT interviewer that “her parents hit her a lot, sometimes with shoes and sometimes with a belt.” She described one incident where she was hit while taking a shower. S.P. also described how Mr. P. would touch her “‘privates and butt.’” She described this by moving her hand in a circular motion. Mother and her sisters have watched Mr. P. do this. She has also seen Mr. P. do this to G.P. and M.P. Mother usually says nothing, but will sometimes say “stop” and tell S.P. not to lay by Mr. P. She said Mr. P. would touch her with her clothes on, but added that Mr. P. has put his hand down into her pants to touch her “‘butt.’” Mother has also touched her over her clothes.

A.M., S.P., and G.P. told the social worker they did not want to reunify with Mother and Mr. P. A.M. said she would like to be placed with her father. She said she

preferred to live with him and be separated from her sisters. M.P., who was three years old at the time, was not interviewed about placement.

In the jurisdictional/dispositional report, DPSS summarized the history of its involvement with the family going back to 2001, including reports of domestic violence, physical abuse against the children, and Mr. P.'s use of methamphetamine. The social worker noted that the parents received preventative placement services for similar allegations of physical and sexual abuse in 2008, but failed to benefit from services.

Based on the physical and sexual abuse committed against the children, domestic violence, and Mr. P.'s drug use, DPSS recommended that the parents be denied reunification services.

At a hearing in December 2010, the court authorized A.M. to live with her father for an extended visit. Minors' counsel requested that the court permit supervised visits between the parents and the three younger children. DPSS's counsel agreed, and indicated that the three younger children want to have visits with the parents. The court then ordered supervised visits.

At the jurisdictional/dispositional hearing held in February 2011, the court found true the allegations in the dependency petitions, declared the children dependents of the court, and removed them from Mother and Mr. P. The court granted A.M.'s father legal and physical custody of A.M. and ruled that dependency jurisdiction over her would be terminated upon the filing of family law orders. Mother would not be allowed to visit

A.M. because the child “was exposed to serious physical and sexual abuse in the home of the [M]other and Mr. [P.]”

The court denied reunification services for Mother and Mr. P. The court found that developing or maintaining the sibling relationship is appropriate. The three younger children were placed together in the same foster care home. Finally, the court set a selection and implementation hearing to be held pursuant to section 366.26 on June 6, 2011.

C. Postdisposition Reports (May 2011-October 2011)

In a status review report filed in May 2011, DPSS reported that weekly supervised visits with Mother began in December 2010. The children appeared nervous during the first three visits. M.P. reportedly “regressed after each visit,” as evidenced by demonstrating dependence upon others to feed her and take her to the restroom, wetting her pants, and, instead of speaking, she would communicate only by pointing, grunting, and whining.

The parents were cooperative during visits. Mr. P. reportedly took the lead in interacting with the children, while Mother sat quietly. She did not initiate interactions with the children, but did respond when the children interacted with her. The children approached her for hugs at the beginning and end of visits. After four months of visits, the social worker commented that the children appeared to have adjusted to the visits; they “approach in a less timid manner and smile during the visits.” Both parents reported that they enjoy the visits.

In March 2011, a social worker asked S.P. and G.P. if they were interested in returning to their parents' care. G.P. told her, "[o]nly if they are doing what you guys are saying." When the social worker inquired further, G.P. said: "To not touch our body or touch others body."

DPSS reported that although services were denied to the parents, Mother provided certificates of completion for parenting and domestic violence programs.

In June 2011, after seven months in a foster home, the children were placed in the home of a paternal second cousin and his wife. DPSS was considering these relatives as prospective adoptive parents. In the new home, the children reportedly "thrive as they attend school regularly, participate in family events, and interact with extended family." The relatives expressed interest in adopting the three children and agreed to maintain contact between the children and A.M.

In July 2011, Mother informed a social worker that she and Mr. P. were no longer living together. At Mother's request, the parents visited with the children on different days. During the separate visits, Mother was more interactive with the children than previously. She would bring them home cooked meals and sit on the floor and play with them. Mr. P. also remained consistent with visits. The children reported they enjoy visiting both parents, and the relative caregiver said the children are happy to visit the parents. However, she also noted that G.P. and M.P. have behavioral changes after visits; G.P. exhibited signs of depression and resists following orders, such as picking up after herself, and "[M.P.] fights with her sisters, bites them, and cries for every little thing."

There was also a report that M.P. had awoke one night crying after dreaming that Mother had hit her in her eye.

The children also had visits with A.M. Because of the distance between them, in-person visits were infrequent. One visit occurred during winter break from school in December 2010. The next was in April, during Easter weekend. In between visits, the children maintained contact with A.M. by telephone two to three times per week.

In July 2011, A.M.'s father sent her to live with her paternal grandparents in Riverside, closer to the other children. While in Riverside, A.M. visits the children two to three times per month and spends weekends with them. The younger children's relative caregivers have known A.M. since her birth and said she was welcome in their home any time.

In July, 2001, Mother obtained a temporary restraining order against Mr. P. A permanent restraining order was issued in October 2011.

In August 2011, a social worker visited the children in the relative caregivers' home. She reported that "the children were having their needs met, as well as receiving love and attention from the prospective adoptive parents. The three girls appeared well adjusted in the home environment."

In a report made in September 2011, a social worker stated that he met with the three girls and explained what adoption meant for them. The social worker reported the following interaction: "I asked [S.P.] if she would like to live with the prospective adoptive couple for a long time. She paused for a little while and said 'no'. I asked her

where would she liked [*sic*] to live and she paused again and got a little serious and said ‘cause I miss my parents.’ I asked [G.P.] the same question and she said ‘with our parents.’ I asked [S.P.] and [G.P.,] if they could not live with their parents in the future[,] where would they like to live. And [G.P.] answered ‘we have a lot of places to stay’ and began to name several family members. I asked what about here [at the relative caregiver’s home,] and both[] [S.P.] and [G.P.] nodded and said ‘yes.’” The social worker reported that three-year-old M.P. was too young to understand the adoptive process. The social worker concluded that although the children “continue to desire to live with their parents, [they] presented as well adjusted in the home environment,” and recommended adoption by the prospective adoptive parents.

D. Mother’s Section 388 Petition and the Section 366.26 Hearing (October 2011)

In October 2011, Mother filed a section 388 petition. She requested that the court vacate the section 366.26 hearing and grant reunification services to her. The court set a hearing on the request.

At the hearing on the section 388 petition, Mother testified. We summarize her testimony as follows. After being denied reunification services in February 2011, she took it upon herself to complete a parenting course, a cooperative parenting program, and a domestic violence course. She also completed a 12-session individual counseling program and a 16-session anger management program. She believes she has benefitted from the programs. Through counseling, she learned “how to give [her]self value as a woman and to be a better mother to [her] children.” More specifically, she “learned not

to be violent.” Her housing situation is stable and she does not live with or maintain contact with Mr. P. She has maintained visits with the children. During visits, the children run to her, hug and kiss her, and tell her they love her. She brings them homemade food, and she enjoys the visits. She believes she has a strong bond with all the children and that granting her services would be in the best interests of the children.

Following argument, the court denied the section 388 petition. The court stated: “The Court finds that there is evidence that the [M]other is in the process of changing her circumstances. It looks like she’s trying to make a change in her life and I give her credit for that. However, the court . . . cannot find that [M]other’s circumstances have changed. [¶] Regarding the . . . best interest[s] of the child[ren]: This is a case of very serious horrend[ous] physical and sexual abuse. These children have been physically and severely emotionally impacted by that abuse. The court cannot find that it’s in the best interest[s] of the children to grant the motion.”

Following the hearing on the section 388 petition, the court held the section 366.26 hearing. Mother’s counsel objected to the termination of parental rights and requested guardianship as the permanent plan. Among other arguments, counsel argued that the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)), and the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)), applied in this case. Following argument, the court found that adoption is in the best interests of the children, and that termination of parental rights would not be detrimental to the children in that

none of the exceptions to adoption are applicable. The court made additional findings and terminated the parents' parental rights. Mother appealed.

III. DISCUSSION

A. *Section 388 Petition*

A parent may petition the juvenile court to change, modify, or set aside a previous order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The petition must state why the requested relief is “in the best interest of the dependent child.” (*Id.*, subd. (b).) When the section 388 petition is filed after the denial or termination of reunification services, as in this case, “the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point, ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Mother bears the burden of proving by a preponderance of the evidence both a change in circumstances and that the change is in the child’s best interest. (See *ibid.*)

We will not reverse a trial court’s ruling on a section 388 petition “unless an abuse of discretion is clearly established.” (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) The scope of a court’s discretion in a particular context is determined by the legal principles that govern the subject of the court’s action. (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-1298; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) In determining whether to grant a section 388 petition, our Supreme Court has made clear

that the trial court's discretion is limited only by "the bounds of reason," and its determination should be disturbed on appeal only when it is "arbitrary, capricious, or patently absurd." (*In re Stephanie M.*, *supra*, at pp. 318-319.)

Initially, we acknowledge Mother's efforts to maintain a relationship with the children. Despite the absence of court-ordered services, Mother enrolled in, participated in, and completed parenting courses, a domestic violence course, and individual counseling. She consistently attended weekly visits with the children and was always appropriate and cooperative. Although Mother did not initiate interaction during the initial visits, she became more interactive as time went on. The children also overcame their initial nervousness to come to enjoy the visits, and would give Mother hugs and kisses. Mother also dealt with the domestic violence issues by terminating her relationship against Mr. P.

Without detracting from Mother's efforts, we do not believe the court abused its discretion in determining that Mother has failed to establish that circumstances have changed for purposes of section 388. Two of the primary reasons for this dependency case are the physical violence and the sexual abuse committed against the children. Significantly, the violence and sexual abuse was perpetrated not only by Mr. P., but by Mother as well; Mother did not merely allow Mr. P. to commit the offensive acts, but committed violence and sexual abuse against the children herself. Although Mother submitted evidence of parenting courses, domestic violence courses, and counseling, she offered no evidence that any of these programs and therapy addressed the sexual abuse

issues. On direct examination, there was no evidence of the substance of the courses she took and, as to the effect of the courses in her life, she stated only vaguely that she believes she has benefitted from the courses. On cross-examination, she was asked what she had learned in therapy, and responded: “I learned how to give myself value as a woman and to be a better mother to my children.” When asked what specific issues she dealt with, she said: “We had a lot of violence in our household, and I learned not to be violent. That is the reason that I separated from [Mr. P.] because the violence continued in our household.” Remarkably, Mother said nothing to indicate that she had done anything to address the problems related to her sexual abuse of the children.

In light of the absence of evidence that Mother has addressed or dealt with DPSS’s serious concerns about Mother’s sexual abuse of the children, Mother failed to meet her burden of proof on the first prong of the section 388 analysis. Accordingly, the court did not err in concluding that Mother failed to establish a change of circumstances for purposes of section 388.

Nor did the court abuse its discretion in concluding that the requested change would not be in the children’s best interest. As noted above, because the section 388 petition was presented at a late stage in the proceedings, there is a rebuttable presumption that continued foster care is in the best interests of the children. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The court’s focus must be on the children’s need for permanency and stability. (*Ibid.*)

Here, at the time of the petition, the children were living in the home of their prospective adoptive parents—their second cousin and his wife. The children were thriving in their placement, receiving love and attention from their relative caregivers, and had adjusted well to the new home. Granting Mother’s request at this late point in the proceedings would necessarily delay the benefits of permanency and stability in the children’s lives.

We agree with Mother that courts should not evaluate the best interests of the children by merely comparing the circumstances surrounding the household and upbringing by the natural parents with that of the caretaker. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) As the *Kimberly F.* court stated, this simplistic comparison “ignores all familial attachments and bonds between father, mother, sister and brother, and totally devalues any interest *of the child* in preserving an *existing family unit*, no matter how, in modern parlance, ‘dysfunctional.’” (*Id.* at pp. 529-530, fn. omitted.) There is nothing, however, in the court’s ruling to suggest that the court made such a simple comparison. It based its ruling on the fact—supported by substantial evidence—that the children were subjected to “very serious horrend[ous] physical and sexual abuse” at the hands of both Mother and Mr. P. In the absence of any evidence that Mother has addressed the issues regarding her sexual abuse of the children, the court did not abuse its discretion in concluding that Mother failed to establish that the requested change would be in the children’s best interests.

Accordingly, we reject Mother’s argument that the court erred in denying her section 388 petition.

B. Termination of Parental Rights—the Beneficial Parental Relationship and Sibling Relationship Exceptions

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) “‘Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child’s best interests are other, less permanent plans, such as guardianship or long-term foster care considered.’ [Citation.]” (*Id.* at p. 574.)

“Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) In this case, Mother argued that two such exceptions apply: (1) the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i); and (2) the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v).

The beneficial parental relationship exception applies when there is “a compelling reason for determining that termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would

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

The parent must also show that the parent-child relationship “‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’” (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The sibling relationship exception applies if the court finds a compelling reason for determining that termination would be detrimental to the child due to a “substantial interference with a child’s sibling relationship, taking into consideration the nature and

extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (§ 366.26, subd. (c)(1)(B)(v).)

"Reflecting the Legislature's preference for adoption when possible, the 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citations.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]" (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.) Mother has the burden of establishing the applicability of the exception. (See *In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)

In reviewing challenges to a trial court's decision as to the applicability of these exceptions, we will employ the substantial evidence or abuse of discretion standards of review depending on the nature of the challenge. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) We will apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues, such as whether the parent has

maintained regular visits with the child (for the beneficial parental relationship exception) or whether the child has a close and strong bond with a sibling (for the sibling relationship exception). (*Id.* at p. 1315; §§ 366.26, subd. (c)(1)(B)(i), (v).) However, a challenge to the trial court’s determination of questions such as whether, given the existence of beneficial parental relationship or a sibling relationship, there is a compelling reason for determining that termination of parental rights would be detrimental to the child “is a quintessentially discretionary determination.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review such decisions for abuse of discretion. (*Ibid.*) In the dependency context, both standards call for a high degree of appellate court deference. (*Ibid.*; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)²

1. Applicability of the Beneficial Parental Relationship Exception

In arguing that the beneficial parental relationship exception applies, Mother points to the following facts: the children were removed from the parents at ages seven, six, and three, and appear to have spent their formative years in Mother’s care; in March 2011, M.P. said she was sad because she missed her Mother; in September 2011, S.P. and G.P. indicated they missed their parents and voiced their desire to return to them; and after the initial “nervous” visits, the children enjoyed the visits and demonstrated

² As the *Jasmine D.* court noted: “The practical differences between the two standards of review are not significant. ‘[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 under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.’ . . .” [Citations.]” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

affection for Mother. Mother also asserts that she filled a parental role during visits by, for example, bringing the children meals, eating together as a family, helping them to wash their hands, talking to them about school, providing them with school supplies, and practicing the alphabet with G.P.

These facts are substantial evidence of an emotional bond between Mother and the children and of pleasant visits between them. We again commend Mother for consistently visiting her children and making sincere efforts to maintain a bond with them. However, even if the children would benefit from continuing the parent-child relationship with Mother, the court must still select adoption as the permanent plan unless it finds there is a compelling reason for determining that termination of parental rights would be detrimental to the children. (§ 366.26, subd. (c)(1)(B)(i).) As noted above, the court's finding that no such compelling reason exists is a matter within the trial court's discretion.

Regarding detriment, Mother points to evidence that G.P. showed signs of depression in August 2011 and that M.P. would, after visits with Mother, fight with and bite her sisters and cry easily. Mother seems to suggest that these negative behaviors are the result of the children's separation from her and thus a harbinger of the detriment that termination of parental rights will cause. The suggestion is less than compelling. First, the evidence that G.P. showed signs of depression is a report to the social worker by the relative care provider, not a counselor or therapist. There is little else in the record to suggest that G.P. suffered from depression. Indeed, in the same report that included the

caregiver's report of "signs of depression," the social worker reported that G.P. "presents as a happy child who has a constant smile on her face."

Moreover, there is nothing to support Mother's suggestion that the "signs of depression" the caregiver noted were a result of G.P.'s separation from Mother rather than from the abuse she suffered or some other cause. Nor is there any basis in the record for concluding that M.P.'s postvisit negative behaviors were due to separation from Mother or that they foretold emotional harm or other detriment to her if parental rights are terminated.

Finally, there was no evidence by any counselor, therapist, social worker, or other person indicating that the termination of the parent-child bond would be detrimental to these children. For this reason, the present case is distinguishable from *In re Amber M.* (2002) 103 Cal.App.4th 681, upon which Mother relies. In *Amber M.*, the Court of Appeal held that the trial court erred when it found that the beneficial parental relationship exception did not apply. (*Id.* at p. 691.) In that case, there was evidence by a psychologist that the mother and the dependent child "shared 'a primary attachment' and a 'primary maternal relationship' and that '[i]t could be detrimental' to sever that relationship." (*Id.* at p. 689.) In addition, a court-appointed special advocate disagreed with the agency's recommendation of adoption due to the bond and love between the mother and child. (*Id.* at pp. 689-690.) Here, by contrast, there was no competent opinion evidence that termination of Mother's parental rights would be detrimental to the children.

In light of the physical and sexual abuse the children endured, Mother's failure to present evidence that she has addressed such issues, and the lack of persuasive evidence that the termination of parental rights would be detrimental to the children, we conclude that the court did not abuse its discretion in concluding that the beneficial parental relationship exception did not apply.

2. Applicability of the Sibling Relationship Exception

Mother contends the court erred in failing to apply the sibling relationship exception to adoption. We reject this argument.

A.M. is the older half sister of S.P., G.P., and M.P. In February 2011, A.M.'s father was given legal and physical custody of A.M. and the court terminated its dependency jurisdiction over her. A.M. maintained frequent telephone contact with the younger children and has been able to make personal visits during breaks from school in December 2010 and April 2011. In July 2011, A.M.'s father sent her to live with the child's paternal grandparents in Riverside, which enabled her to have more frequent visits with her siblings. The prospective adoptive parents for the younger children said A.M. is welcome in their home any time. She has been visiting two to three times per month and spends weekends with her sisters.

Mother asserts that there is a strong bond between A.M. and the younger children and, if adoption proceeds, "the maintenance of the sibling relationship will depend solely on the continued goodwill of [A.M.'s] father and the 'unenforceable promise of future visitation' by [S.P., G.P. and M.P.'s] prospective adoptive parents." (Quoting *In re S.B.*,

supra, 164 Cal.App.4th at p. 300.) Thus, she concludes, the “termination [of Mother’s] parental rights is detrimental to [S.P., G.P. and M.P.] because it could substantially interfere with their sibling relationship with [A.M.]”

Here, even if we assume that the sibling relationship between A.M. and the other children was of the nature and quality described in section 366.26, subdivision (c)(1)(B)(v), and further assume that the termination of parental rights will interfere with the children’s relationship, Mother has not pointed to any evidence that any such interference would outweigh the benefits of adoption or otherwise be detrimental to the younger children. We therefore conclude the court did not abuse its discretion in finding that this exception did not apply.

IV. DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

HOLLENHORST
Acting P. J.
MCKINSTER
J.