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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re A.R., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.R. et al.,

Defendants and Appellants.

E055307

(Super.Ct.No. J235543)

**OPINION**

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

Bucholz, Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and  
Appellant A.R.

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

Jean-Rene Basle, County Counsel, and Stacy A. Moore, Deputy County Counsel, for Plaintiff and Respondent.

Father A.R. (Father) and mother L.D. (Mother) appeal after the termination of their parental rights to their child at a Welfare and Institutions Code section 366.26<sup>1</sup> hearing. They claim the juvenile court erred by failing to apply the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i).

## I

### PROCEDURAL AND FACTUAL BACKGROUND

#### A. *Detention*

On October 18, 2010, two-year-old A.R., daughter of Mother and Father, was detained and placed in foster care by the San Bernardino County Children and Family Services (the Department). According to the detention report, on August 26, 2010, the Department received a referral alleging emotional abuse, physical abuse, and general neglect of A.R. by Mother. On October 8, 2010, a social worker from the Department visited Mother's home.

The social worker did not see any visible signs of abuse. Mother admitted using methamphetamine on January 31, 2010, and in August 2010, and she was on parole for charges of evading police. She reported that she previously lost custody of two of her other children who were currently under legal guardianship with a paternal relative.

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

Father did not live with her because of problems with domestic violence. The Department planned to monitor Mother, and she agreed to stay involved in an outpatient substance abuse program and to submit to random drug testing.

On October 15, 2010, Mother tested positive for amphetamines. She was contacted by the Department and told she could keep A.R. if she entered an inpatient drug treatment program. Mother told the Department she had not been using drugs and they could not take A.R. She told them, "That is bullshit[.] I have not used any drug and if you plan on taking my daughter away then good luck catching us."

On October 18, 2010, a social worker with the Department and a San Bernardino County Sheriff's deputy went to the home to detain A.R. Mother cussed and screamed at them. She threatened to throw a telephone at them and said she did not care if she was arrested. A.R. was placed into foster care.

A criminal history report showed that Mother and Father both had a significant criminal history. Mother had suffered charges of assault and battery, felony evading a peace officer, and receiving stolen property. Father had convictions for making criminal threats, resisting a peace officer, possession of a controlled substance, and assault with a deadly weapon.

On October 20, 2010, the Department filed section 300 petitions against Mother and Father alleging a failure to protect and provide (§ 300, subd. (b)) due to both Father and Mother having substance abuse problems and their criminal history. It was further alleged under section 300, subdivision (j) that Mother had neglected A.R.'s half sibling,

A.D., on November 23, 2005, due to her substance abuse problems. Mother had failed to reunify with A.D.

The detention hearing was conducted on October 21, 2010. The juvenile court found a prima facie case and ordered A.R. detained in the custody of the Department. Mother and Father were to submit to drug testing, and visitation was to occur two times per week.

B. *Jurisdiction/Disposition*

In a jurisdictional/dispositional report filed on November 9, 2010, the Department recommended that reunification services be granted to Mother and Father.

There were six prior referrals to the Department for Mother starting in 1999 for her two other children who eventually were placed in legal guardianship with the paternal aunt. Mother was also involved in reunification services for A.D. but failed to reunify. On April 7, 2007, her parental rights to A.D. were terminated.

Mother was unemployed. She had been using drugs since she was 12. She had been in both inpatient and outpatient treatment programs. Father had served time in prison for domestic violence. He also had a history of drug and alcohol use. Mother had no family support. Father claimed to be employed as a handyman.

Mother did appear to have a bonded relationship with A.R. During visitation, which she consistently attended, she played with A.R., and they would sing and dance. Father was appropriate during the one visitation he had with A.R. Mother was willing to

do inpatient treatment, but she had yet to enter into a program. A.R. was suffering from asthma. She was a happy child and had good verbal skills.

On October 21, 2010, Father tested positive for amphetamines and marijuana. Mother admitted to taking amphetamines as recently as October 29, 2010. The Department was recommending inpatient and outpatient drug treatment programs.

The Department was concerned about Mother's ability to complete a drug treatment program due to her prior failure to reunify with A.D. Mother clearly loved A.R. and, if she could maintain sobriety, might be able to have custody of A.R. returned to her.

An addendum report was filed on December 9, 2010. According to a police report sent to the Department, on November 6, 2010, the Highland Police Department was called to Mother's home on a report of domestic violence. Mother reported that Father entered her home and yelled at her. He then threw things he found in her bedroom at her head. Father went outside and called Mother from the front lawn. He told her, "[Y]ou know how easy it would be to take you out" and "I could do it real quick." Mother heard what she thought was a gun being racked when he made these statements. Mother believed that Father would carry out these threats.

Mother told the Department that, earlier that day, she and Father had shared drugs and engaged in sexual relations. However, they got into a fight, and they threw punches at each other. Mother was hit in the head during the altercation, and Father eventually left the house. Father returned to her home later that night and found her in bed with a

male friend. Father pushed all of the items on the headboard onto her head. He left again but returned with a gun and made threats to kill her. Father denied that there had been a domestic violence incident.

Mother had entered an inpatient drug treatment center. She appeared to be making progress in her recovery. She was attending parenting classes and counseling. She had two negative drug tests. Father had also begun counseling and had attended one parenting class.

A jurisdictional/dispositional hearing was conducted on December 15, 2010. Mother and Father waived their rights to a contested hearing. No charges had been filed for the domestic violence incident. The Department found the allegations in the petition under section 300, subdivisions (b), and (j), true. Reunification services for six months were granted to Mother and Father. Father was named the presumed father.

*C. Review Reports and Section 366.21 Hearing*

A six-month review report was filed on June 7, 2011. It was recommended that reunification services be terminated for both Mother and Father and that a section 366.26 hearing be set.

The foster mother reported that A.R. had been exhibiting behaviors that showed that she might have been sexually abused by making “humping motions” on the floor with a book between her legs. She also was aggressive with other children in the foster home. She was talking back to the foster mother.

The social worker had discussed her concerns regarding sexual abuse with Mother. Mother reported that while she had been incarcerated in the past, A.R. had stayed with her aunt and uncle. When A.R. returned to Mother, Mother noted an injury to her vaginal area. She took A.R. for an evaluation and was advised that there had been no sexual abuse. Mother assured the foster mother that she never let A.R. out of her sight, even when she was doing drugs.

Father had failed to attend visitation on December 28, 2010. At visitation on January 10, 18, and 31, 2011, Mother asked that A.R. be returned to her to live in the inpatient facility with her. Mother also asked for unsupervised visits. When the request was denied, Mother became very upset and agitated.

On February 1, 2011, Father entered a residential treatment center. However, on February 16, 2011, he walked out the program, claiming that the staff had treated him badly. He was terminated from the program. Mother was to graduate from her inpatient program on February 11, 2011, and she was moving into sober living and was going to participate in drug court.

On February 22, 2011, the foster mother continued to express concern that A.R. had been subjected to sexual abuse. A.R. was rubbing against her dolls in sexually inappropriate ways, had been seen sticking her finger in her vagina and anus, and had been playing with her feces. A.R. also used inappropriate words like "shit" and called the foster mother "you stupid ass." Mother had been having daily telephone contact with A.R. while she was in the foster home, which was not allowed.

On February 28, 2011, Mother, who was in a sober living home, was asked to take a drug test because it was reported that she had not slept the night before. She tested positive for methamphetamines. When confronted with the results of the test, Mother got angry and denied using drugs. She was asked to leave the sober living facility immediately. She threatened to beat up all the other residents at the facility. She finally admitted to the Department that she had relapsed and used methamphetamine. She refused to reenter an inpatient treatment program but was continuing in outpatient treatment.

On March 7, 2011, Mother arrived an hour late to visitation and was drunk. Mother admitted to drinking “lots” of alcohol the night before. She reported that she was extremely depressed. She admitted that she was bipolar and had been taking medication to treat the disorder. She was receiving psychiatric counseling. On March 10, 2011, it was reported that Mother had failed to show up for a drug test and was not attending her outpatient treatment program.

On March 14, 2011, Mother arrived at visitation. She was brought to the visit by her boyfriend. Mother complained that she was not allowed to have unsupervised visitation. She blamed her relapse on the refusal to allow her unsupervised visitation.

Father requested a referral to a residential program on March 16 and 18, 2011. He did not ask about A.R. and did not request visitation.

On March 23, 2011, it was discovered that Mother was allowing her boyfriend, R.M., to speak with A.R. during telephone calls. The foster mother was advised to

discontinue telephone calls between Mother and A.R. Mother called the Department to complain that R.M. was not allowed to speak with A.R. Mother informed a social worker at the Department that she was going to marry R.M., and he was going to adopt A.R. Mother was informed that R.M. could not adopt A.R. because she was in the custody of the Department and that Mother had failed a drug test. Mother began using profanity with the social worker.

During a visitation between Mother and A.R. on April 7, 2011, Mother spent a majority of the visit texting on her cellular telephone. She also brought R.M. to the visit and allowed A.R. to hug him.

On April 10, 2011, Mother reported to the Department that Father had confronted her and R.M. and tried to initiate a physical altercation with R.M. Mother reported that Father had a handgun in his possession that he displayed to R.M. Father admitted the altercation but denied that he had a gun.

As of April 12, 2011, Father had not visited with A.R. for several months. On April 22, 2011, Father had a visit. He reported that the night prior to the visit he had been kicked out of his residential treatment program for breaking rules.

During a visitation between A.R. and Mother on April 18, 2011, A.R. stated that Father had hit her in the past on the shoulder. Mother claimed that this must have occurred when she was incarcerated and A.R. was in Father's custody. Mother also detailed an instance when she got into an argument with a man while staying at a friend's house. While Mother was holding A.R., the man punched Mother in the face. A.R. tried

to bite the man to defend Mother, and the man hit A.R. in the eye. Mother claimed she and A.R. were treated at the hospital and released. Father confirmed Mother's story.

On May 2, 2011, Mother had a supervised visit with A.R. Father arrived for his visit. Mother called law enforcement officials claiming that Father was abusing A.R. When law enforcement officials arrived, Mother was yelling and screaming that the social worker was allowing an abuser to be with A.R. Mother and R.M. were escorted away. Mother appeared to be under the influence.

As of May 9, 2011, Mother was not attending outpatient drug programs because she claimed she was too depressed. She admitted using methamphetamines on May 5, 2011. She refused to enter an inpatient treatment program. She threatened to kill herself if A.R. was not returned to her. Father visited with A.R. on May 11, 2011. He showed the Department threatening text messages that he had received from Mother.

A.R. was generally healthy but was suffering from asthma. She was also suffering from some developmental delays. She was defiant and argumentative. She was prone to kicking, spitting, tantrums, sleeping problems and exhibiting sexual behaviors.

Mother had failed to appear for random drug tests since March 2011. Father had not completed any outpatient or inpatient treatment programs. Mother had attended all but a few of her visitations with A.R. Mother had completed a parenting program and an anger management program.

The Department recommended terminating reunification services due to the continued substance abuse problems suffered by Mother and Father, the violent relationship between the two, and the failure to complete services.

Mother contested the termination of services. The matter was set for hearing.

On July 19, 2011, the hearing was conducted. At that time, the Department submitted additional reports. Those reports revealed that Father had failed to appear for scheduled drug tests on June 13 and 24, 2011. Father had also been terminated from his most recent drug program. He had tested positive for methamphetamine on May 20, 2011. Mother had been admitted to an outpatient drug treatment program on June 8, 2011, but never returned for services. She tested positive for methamphetamine on that day. Mother failed to appear for random drug tests on June 17 and 27, 2011. Mother and Father did not present any evidence, and the Department submitted on its reports.

The juvenile court terminated reunification services and set a section 366.26 hearing.

*D. Report for Section 366.26 Hearing*

On November 4, 2011, the Department filed a section 366.26 report. The Department was recommending adoption. A.R. had been moved into the prospective adoptive parents' home since the foster parents who had been caring for her were unable to adopt her. A.D., A.R.'s half sibling who had been removed from Mother's care, was also in the home.

A.R. was generally in good health. She had numerous cavities that needed to be filled. She had some balance and coordination problems. She had some speech delays. Since being moved to the adoptive home, her behavior had improved. A.R. had bonded with the adoptive parents. The Department noted that A.R. also had a strong bond with the Mother. The Department was recommending a gradual termination of visits between Mother and A.R. once parental rights were terminated.

Mother was consistent with her visitation. As long as Mother remained sober, it was recommended that she continue visitation with A.R. The adoptive parents were willing to allow correspondence but were unsure about face-to-face visits after the adoption.

Father had attended only four visits, and had not attended any visits since June 2, 2011.

The contested section 366.26 was conducted on December 15, 2011. The juvenile court terminated the parental rights of Father and Mother, and A.R. was freed for adoption. The details of the hearing will be addressed in more detail, *post*. Father and Mother filed an appeal from the termination of parental rights.

## II

### BENEFICIAL PARENT RELATIONSHIP EXCEPTION

Mother, joined by Father, contend that the juvenile court erred because it failed to apply the beneficial parent/child exception of section 366.26, subdivision (c)(1)(B)(i) since Mother maintained a substantial and close bond with A.R.

A. *Additional Factual Background*

At the section 366.26 hearing, Mother presented the testimony of two social workers from the Department who supervised visitation between Mother and A.R. Both agreed that there was an attachment between Mother and A.R. When visits would begin, A.R. would run to Mother and call her “mommy.” Mother was positive with A.R. throughout the visits. Both agreed that A.R. may have some grief and loss when the visitation between Mother and A.R. was discontinued, as with any end of a relationship between a birth mother and child. The social workers were working with the prospective adoptive parents regarding potential postadoption visitation. However, the adoptive family was reluctant to allow postadoption visits.

A.R.’s visits with Father were somewhat “standoffish” but were appropriate. The visits ended without any emotional issues. A.R. never asked to visit with Father.

A.R. would sometimes cry at the end of visits when she would have to return to the former foster family. Once A.R. was placed in the prospective adoptive home, she would be happy at the end of the visits and would not cry. A.R. would hug the adoptive mother and also call her “mommy.” She called the adoptive father “daddy.” A.R. and A.D. were getting along well. A.R. was not aggressive with the other children in the adoptive home. A.R.’s speech delays were being addressed.

Mother testified at the hearing. A.R. was with Mother from birth until she was nine months old. Mother was incarcerated from the time A.R. was nine months old until she was 16 months old and A.R. was then returned to Mother. A.R. was two years old

when she was taken by the Department in October 2010. Mother had attended all of the weekly visits with A.R. except one.

Mother indicated that A.R. was always excited to see her at visits and called her “mommy.” A.R. would not want to stop the visits. Mother and A.R. were like “best friend[s].” A.R. was always hugging her and wanting to be with her. Mother believed that A.R. would benefit from continuing to see her. Mother felt it would be “bad” for A.R. to not have any contact with her after being adopted.

Father also testified. A.R. had lived with him for only a short period of time. He was the sole caretaker for her when Mother went to prison, but this was only for two months. Father claimed when A.R. was first taken, he attended two or three visits. A.R. was excited to see him and would be upset when the visits were over. Father had missed some visits because of his treatment programs. Father said that the visits he attended went well. Father thought it would benefit A.R. to continue visitation.

The Department argued that A.R. was thriving in her new placement. She was no longer suffering from behavioral problems. She was bonded to the adoptive parents. She was also generally adoptable. Minor’s counsel supported the adoption. A.R.’s temperament had improved, and she was bonded to her older sister.

Mother’s counsel argued that Mother had maintained consistent visitation with A.R. There was an attachment between A.R. and Mother. It was not in A.R.’s best interest to terminate the relationship with Mother and have her placed in an adoptive home with no visitation. Father joined Mother’s argument.

The Department countered that Father clearly had not maintained consistent visitation. As for Mother, the Department agreed that there was a bond and that she consistently visited. A.R. had spent half of her life out of Mother's custody. However, the Department disagreed that there was a parental bond that outweighed the stability and benefit of the adoptive home.

The trial court ruled on the exception finding as follows: “. . . Court does not doubt for a second that both the parents love the minor and care greatly about her and her future. However, the Court does not believe that with the father there was the meaning of the first prong which was the consistent visits with the minor. With regard to the mother, Court does find at some level mother has maintained consistent contact with minor throughout the entire time frame of the minor's dependency and the Court does find that that interaction has been positive and a pleasant relationship, but the Court does agree with the Department that there has not been shown a detriment to the minor would exist if the bond with the mother was or the relationship with the mother was severed. Court does find that there are statements contained in the report, the 26 Report, that discusses generically grief and loss suffered by minors and the Court believes that information is true that that would be effective to most minors in this situation, that they would suffer some grief and loss. The Court did not find it particularly applicable to this situation, however, when the Court also received evidence that the minor has returned to the custody of the concurrent planning home parents and has indeed flourished in whatever aggressive behaviors the minor has, they have diminished significantly in the short

amount of time that the minor has been placed with the concurrent planning home parents and for that reason the Court does not find there would be a detriment to the minor.”

Thereafter, the court terminated the parental rights of Mother and Father, freeing A.R. for adoption.

### B. *Analysis*

At the section 366.26 hearing, the sole issue “‘is whether there is clear and convincing evidence that the child is adoptable.’ [Citations.]” (*In re Josue G.* (2003) 106 Cal.App.4th 725, 733; see § 366.26, subd. (c).) “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds that a child may not be returned to his or her parents and is likely to be adopted, it must select adoption as the permanent plan, unless it finds that termination of parental rights would be detrimental to the child under one of the seven exceptions set forth in section 366.26, subdivision (c)(1)(A) and (c)(1)(B)(i) through (v). (See *In re Jamie R.* (2001) 90 Cal.App.4th 766, 773.)

The parental benefit or “beneficial relationship” exception is set forth in section 366.26, subdivision (c)(1)(B)(i). The exception applies where “[t]he parents . . . have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The parent has the burden of proving that the exception applies. (*Ibid.*) “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.” (*Id.* at p. 827.) “In other words, for 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 Angel B.* (2002) 97 Cal.App.4th 454, 468.)

A beneficial relationship is one that “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 re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) “‘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, 1350.)

The record does not support that Father maintained consistent visitation with A.R. throughout the proceedings. In fact, Father does not even appear to argue that the beneficial parental relationship exception should apply to him.

There is no dispute that Mother maintained consistent visitation with A.R. Moreover, there was an attachment between A.R. and Mother. However, Mother herself described the relationship as their being best friends, not necessarily in a parent/child relationship. Further, although A.R. ran to Mother at the visits and called her “Mommy,” she did the same thing with the adopted mother. The record is replete with instances of Mother playing, singing, and dancing with A.R., but nothing that shows Mother took a

role as a parent, i.e., addressing the emotional and physical problems that A.R. was exhibiting when she was first in foster care.

A.R. had established a significant bond both with her adoptive parents and her sister, A.D., who also resided at the adoptive home. She was thriving, no longer exhibiting the aggressive or sexual behaviors she first possessed when she was detained. In the adoptive home, she no longer would be exposed to drug use and domestic violence.

Further, we cannot discount that Mother failed to complete her services and continued to suffer from long-term substance abuse. Throughout the reunification period, Mother continued to test positive for methamphetamine and failed to report for random drug tests. She had been using drugs since she was 12 years old and had previous failures in treatment. She was expelled from treatment programs during the reunification period and refused to reenter inpatient treatment. Mother had lost her two older children to legal guardianship, and she lost custody to A.D. due to her drug use and domestic violence. She also continued to be combative with Father, and they had a history of domestic violence. Mother also refused to follow Department rules, acting inappropriately with the social workers, and continuing to allow R.M. to be in a relationship with A.R.

Based on the foregoing, the evidence supported that although there was a bond between A.R. and Mother, that bond clearly did not outweigh the well-being A.R. would gain in a permanent home with the adoptive parents. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

III

DISPOSITION

The juvenile court's order is affirmed.

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RICHLI  
J.

We concur:

HOLLENHORST  
Acting P. J.

KING  
J.