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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.A. et al.,

Defendants and Appellants.

E059643

(Super.Ct.No. RIJ1200660)

**OPINION**

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,  
Judge. Affirmed.

Michelle Anne Cella, under appointment by the Court of Appeal, for Defendant  
and Appellant T.A.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and  
Appellant M.A.

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

T.A. (mother) and M.A. (father) appeal from an order terminating parental rights to their infant son A.A. (sometimes child). They contend that the mother's visitation and contact with the child were so positive that they should have prevented termination of parental rights under the "beneficial parental relationship" exception. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).) This "may be the most unsuccessfully litigated issue in the history of law . . . ." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) This case is no exception. On these facts, this contention is utterly meritless. Hence, we will affirm.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

A.A. was born in June 2012. While he was still in the hospital, the Department of Public Social Services (the Department) detained him and filed a dependency petition concerning him. In August 2012, he was released from the hospital and placed in a foster home.

In September 2012, at the jurisdictional/dispositional hearing, the juvenile court sustained the allegations of the petition. It formally removed the child from the parents' custody and ordered reunification services.

In April 2013, at the six-month review hearing, the juvenile court terminated reunification services and set a hearing pursuant to Welfare and Institutions Code section 366.26 (section 366.26 hearing).

Also in April 2013, the child was placed with the mother's mother and stepfather (maternal grandparents); they were in the process of adopting the child's older sister, and they wanted to adopt him.

In September 2013, at the section 366.26 hearing, counsel for both parents objected to termination of parental rights and asked the juvenile court to select guardianship as the permanent plan. The juvenile court found that the child was adoptable and that none of the exceptions to termination applied. It therefore terminated parental rights.

## II

### DISCUSSION

“Adoption is the Legislature’s preferred permanent plan. [Citation.]” (*In re D.M.* (2012) 205 Cal.App.4th 283, 290.) Thus, as a general rule, at a section 366.26 hearing, if the juvenile court finds that the child is adoptable, it must terminate parental rights. (Welf. & Inst. Code, § 366.26, subs. (b)(1) & (c)(1).) There is an exception to this rule, however, if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” (*id.*, subd. (c)(1)(B)) for one of six specified statutory reasons. (*Id.*, subd. (c)(1)(B)(i)-(vi).) One such reason is that “[t]he parents have maintained

regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i).)

“The ‘benefit’ prong of th[is] exception requires the parent to prove his or her relationship with the child ‘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.’ [Citations.]” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) “‘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.’ [Citation.]” (*In re Michael G.* (2012) 203 Cal.App.4th 580, 594.)

“[T]he parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits — the parent must show that he or she occupies a parental role in the life of the child. [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) “‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.]” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

“The burden falls to the parent to show that the termination of parental rights would be detrimental to the child under one of the exceptions. [Citation.]’ [Citations.]” (*In re C.B.* (2010) 190 Cal.App.4th 102, 122.)

The existence of a beneficial parent-child relationship is a factual issue; we review the trial court’s findings on this issue for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) “On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” [Citation.]’ (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) Thus, “a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental . . . relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Bailey J., supra*, at p. 1314.)

The mother argues that she visited regularly and consistently. This is accurate, as far as it goes, but the beneficial parental relationship exception requires *both* regular visitation *and* benefit to the child.

The mother asks us to assume that the child would benefit from maintaining contact with her, because she is his “natural mother” and he will wonder “where his mother is.” In other words, being adopted, in itself, is detrimental. That upends the legislative preference for adoption. For this case to get as far as a section 366.26 hearing,

the juvenile court had to find — repeatedly — that being in the mother’s custody would be detrimental to the child. (Welf. & Inst. Code, §§ 319, subd. (b) [detention hearing], 366.21, subd. (e) [six-month review hearing].) While it may be true that, in most families, it is good for a child to remain with his or her natural parents, once a family has gone so awry that a court is contemplating the termination of parental rights, we cannot just blithely assume this; indeed, the legislature has forbidden us to do so.

Finally, the mother states: “The social worker wrote that [the mother] ‘is always on time, is well groomed, and with . . . a pleasant demeanor. [She] engages well with her son, often talking to him, playing and taking pictures.’ [Citation.] [The mother] ‘loves her son very much.’ [Citation.] The foster mother also reported [the mother] was appropriate, interacted well, talked and played with [the child], took pictures, and brought him a Christmas present. [Citation.] She is cooperative with the caregiver. [Citation.]”<sup>1</sup>

All of this is information *about the mother*. It tells us nothing about whether *the child* benefited from his visitation with her.<sup>2</sup> Certainly it is not evidence that she

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<sup>1</sup> None of this evidence was before the juvenile court at the section 366.26 hearing. It is all taken from the report filed for the six-month review hearing. This particular report was not offered into evidence and, a fortiori, was not admitted at the section 366.26 hearing. For this reason alone, it cannot carry the mother’s burden of proof. (See Welf. & Inst. Code, § 366.26, subd. (b).)

<sup>2</sup> Actually, there was evidence (which the mother does not mention in her brief) that during visits, her interaction with the child was “limited” and she paid more attention to his older sister. In the maternal grandmother’s opinion — which was unrebutted — he “just doesn’t know her.”

occupied a parental role in the child’s life or that he had a significant, positive, emotional attachment to her.

At most, it is inferable that the child enjoyed having someone he knew talk to him and play with him. Presumably the maternal grandparents, however, also talked to him and also played with him. But more than that, they made a home for him; they were there for him every day. They had visited him regularly even before he was placed with them. He “appear[ed] to be happy, healthy and content in their care.”

We therefore conclude that the juvenile court could reasonably find that the beneficial parental relationship exception did not apply. In fact, the juvenile court would have erred if it had found that the exception *did* apply.

### III

#### DISPOSITION

The order appealed from is affirmed.

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RICHLI  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.