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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re E.T. et al., Persons Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

E060739

(Super.Ct.No. RIJ1100834)

OPINION

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

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

The juvenile court terminated the parental rights of D.T. (mother) to her two sons, E.T. and J.T. (Welf. & Inst. Code,<sup>1</sup> § 366.26, subd. (c)(1)). She appeals, contending the court erred by not applying the beneficial parental relationship exception to termination (§ 366.26, subd. (c)(1)(B)(i)). We affirm.

## I. PROCEDURAL BACKGROUND AND FACTS

On June 15, 2011, the Riverside County Department of Public Social Services (the Department) filed a juvenile dependency petition alleging that E.T. (born in 2004) and J.T. (born in 2006) came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition alleged that mother was unable to provide for her children, suffered from mental illness, and had a history of domestic violence. S.T. (father) allegedly had convictions for domestic violence, a history of physical discipline, and failed to provide for his sons.<sup>2</sup> According to the detention report, the maternal aunt had been taking care of the children, who suffered from “serious behavior problems, developmental delays, and [E.T.] ha[d] been diagnosed with autism.” The maternal aunt contacted the Department because she was “unable to meet their needs due to her current medical condition.” Mother was “currently residing at a medical board and care facility” due to “ongoing medical issues.” Specifically, mother suffered from fibromyalgia, cystic psoriasis and ulcerative colitis. The children were previously referred to child welfare

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<sup>1</sup> All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Father is not a party to this appeal.

agencies in Merced and Riverside Counties. On June 16, 2011, the juvenile court detained the children and ordered supervised visitation.

The jurisdiction/disposition report filed on July 13, 2011, recommended that the children be declared dependents of the court and that reunification services be provided. The parents had previously received child protective services in the State of Oregon on two separate occasions. The social worker interviewed the children. E.T. stated that he did not want to live with either of his parents; however, he did not know why. J.T. was nonresponsive. Mother did not deny the allegations in the petition. She explained that she had not visited with the children because she did not want them to “know or visit with her while hospitalized.” She did speak to the children on the telephone several times per week. The Department recommended individual counseling and parenting classes.

At the July 18, 2011, jurisdiction/disposition hearing, the court sustained the allegations in the petition, removed custody of the children from the parents, continued the prior visitation order, and ordered reunification services.

In the six-month status review report filed on January 3, 2012, the Department recommended six additional months of reunification services. Mother was receiving disability payments and living with an acquaintance, D.H., whom she referred to as her “foster mother” and who assisted mother with her daily care. If the children returned to mother’s care, D.H. would help care for them. Mother was physically unable to participate in a counseling assessment and it was physically challenging for her to attend parenting classes and counseling. Although mother relied on Dial-A-Ride for transportation, she had visited the children six times from July through December 2011.

The Department expressed concern about mother's ability to care for the children if her health did not improve. On January 17, 2012, the court ordered reunification services for six more months, noting that the parents' progress was adequate but incomplete.

The 12-month status review report was filed on July 3, 2012. The Department recommended termination of all services and adoption as the permanent plan. Due to mother's health conditions and related medication, she was limited in her mobility and her ability to care for herself. She completed her mental health counseling, including domestic violence counseling, by mid-April. She completed her parenting course in August. She continued to have weekly supervised visits with the children, lasting one to two hours; however, at times, she canceled or failed to show up for visits. The supervising foster mother opined that "mother does not have an understanding of the needs, attention, and supervision that her children require, especially given [E.T.'s] special needs." The children were physically healthy. E.T. had a difficult time following directions at home and school and required a significant amount of redirection, structure, and guidance. Nonetheless, he was doing well academically and making progress with his skills. J.T. appeared to be developmentally on target; he was an active five year old, talkative and social with children his age. On July 17, 2012, father requested a contested review hearing and the matter was heard on August 10, 2012. At that hearing, the court terminated reunification services for father, set an 18-month review hearing, and continued visitation.

The 18-month permanency review report was filed on November 28, 2012. The Department recommended that reunification services be terminated and that the court

establish a permanent plan of adoption for the children. As of November 19, 2012, mother had been evicted from her apartment and was residing with her neighbor on a temporary basis. The children were doing well in their current placement, appearing to be bonded to their foster mother. Since September 19, 2012, mother had not visited the children, and prior to that date, her visitation was inconsistent. The social worker noted: “This is the family’s third time being under the auspices of [the Department] and the Court for issues pertaining to abuse and neglect. It appears that neither parent fully understands the impact their behaviors have on their children.” Given the parents’ poor prognosis, the Department opined that it would be contrary to the children’s best interests to continue to offer reunification services. The children’s adult cousin, R.T., expressed a desire to be considered as a prospective adoptive parent. She was visiting the children every month, maintained telephonic contact, and it appeared the children were bonded to her. A contested hearing was set.

In an addendum report filed on January 14, 2013, the social worker stated that mother’s sister called and reported that mother said she had gone with D.H. to visit D.H.’s family in Tennessee. Mother said that D.H. was “trying to pimp [her] out for money.” In contrast, D.H. told the social worker they were staying in a Motel 6 in Hemet. The Department continued its recommendation of termination of services. On January 24, 2013, the court terminated reunification services and set a section 366.26 hearing. Visitation was reduced to once monthly.

On April 10, 2013, the Department filed a declaration of due diligence documenting its attempts to locate mother. A section 366.26 report was filed on May 6,

2013. Mother's whereabouts remained unknown; however, she claimed that after voluntarily going to Tennessee with D.H., D.H. "abducted" her, stole her disability checks and prevented her from returning to California. Mother claimed that she could not get back to California until April, and she was now living with her father, who had been charged with failure to register as a sex offender. As of May 2013, mother had not visited the children since September 19, 2012. Since April 27, 2013, the children were on an extended visit with their relative caregiver, R.T., who was identified as a prospective adoptive parent. They were bonded with her. On May 23, 2013, the court continued the section 366.26 hearing.

An addendum report was filed on September 18, 2013, and a status review report was filed on November 8. The Department noted that the children remained placed with their relative caregiver in Northern California, and they had made great progress under her care. The relative caregiver drove to Southern California once a month to facilitate visitation between mother and the children. However, as a result of the visits, the children "bec[a]me hyper, [did] not often listen to instruction, and [were] disrespectful towards their mother." Following these visits, J.T. had temper tantrums where he would hit others and scream when denied something he wanted. The social worker recommended that the visits be at the discretion of the relative caregiver. The children reported they wanted to live with their relative caregiver. By February 2014, the relative caregiver urged the court to end the monthly visitation and "take their case to the next level."

On March 3, 2014, at the section 366.26 hearing, the court concluded the children would likely be adopted, that termination of parental rights would not be detrimental because none of the exceptions contained in section 366.26, subdivision (c)(1)(A) or (B) applied, and that adoption was in the best interests of the children. Thus, the court terminated all parental rights and selected adoption by the “current caretaker” as the given preference.

## II. THE BENEFICIAL PARENTAL RELATIONSHIP EXCEPTION

Mother contends the juvenile court erred in not applying the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i). We find no abuse of discretion.

At a section 366.26 hearing, the court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) 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 a compelling reason for determining that termination of parental rights would be detrimental to the child under one of the exceptions set forth in section 366.26, subdivision (c)(1)(B). One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). (See *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206.) This exception applies when the parents “have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) The phrase “benefit from continuing the relationship”

refers to a parent/child relationship 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 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.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)) It is the parent’s burden to show that the beneficial parental relationship exception applies. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1345.)

We review for an abuse of discretion the juvenile court’s decision to not apply the parent-child bond exception.<sup>3</sup> (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.)

Mother faults the court for failing to choose guardianship as the appropriate permanent plan. She asserts that the “record as a whole reveals that [she] maintained regular visitation and contact with [E.T. and J.T.] throughout the dependency

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<sup>3</sup> There appears to be a split of authority as to which standard of review is applicable to a decision not to apply the parent-child bond exception—substantial evidence or abuse of discretion. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425 [Fourth Dist., Div. Three applied the substantial evidence standard]; *Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [Fourth District, Division One applied the substantial evidence standard].) Some courts have applied both standards. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We choose to follow the precedent of *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351, which explained the abuse of discretion standard is applicable, because “[t]he juvenile court is determining which kind of custody is appropriate for the child[, and] [s]uch a decision is typically review[ed] for abuse of discretion.”

proceeding.” We disagree. The record before this court shows that mother visited the children six times between July 2011 and January 2012, and sporadically from January to September 2012. From September 2012 to June 2013, there were no visits, and from June 2013 on, visitation was monthly as facilitated by the relative caregiver. Thus, contrary to mother’s claim, she did not maintain regular visitation and her telephonic contact was limited. Nonetheless, she blames her limited visitation on her “array of serious health conditions.”

Mother argues that her situation was similar to that in *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538 (*Brandon C.*) and *In re Amber M.* (2002) 103 Cal.App.4th 681, 690 (*Amber M.*), i.e., she visited with the children as often as her situation permitted. However, those cases are distinguishable. In *Brandon C.*, the Los Angeles County Department of Children and Family Services failed to provide information to the court about the quality of the visits between the mother and her children. Rather, the reports simply described “the regularity of the visits, with no evaluation of their success.” (*Brandon C.*, *supra*, at p. 1538.) Thus, the only evidence before the juvenile court concerning the mother’s relationship with her children was the testimonies of the mother and the paternal grandmother that there was a close bond, and that a continuation of contact would be beneficial to the children. (*Id.* at p. 1537.) The appellate court affirmed the juvenile court’s finding that the beneficial parental relationship exception applied. (*Id.* at p. 1538.) Here, the Department provided information regarding the quality of the visits and mother’s relationship with the children. According to the reports, when mother visited with the children, she appeared to be unaware of age-appropriate interaction and

was unable to control their behavior and redirect them when necessary. Moreover, the visits with mother had a negative effect on the children. The relative caregiver reported that after visits, J.T. had temper tantrums where he would scream and hit others when denied something he wanted.

In *Amber M.*, several professionals expressed conclusions that the mother and the minors were strongly bonded and that interfering with their relationships could be harmful to the minors. (*Amber M, supra*, 103 Cal.App.4th at p. 689.) A psychologist who had conducted a bonding study between Amber and the mother found that they shared “a primary attachment” and “primary maternal relationship” that could be detrimental to sever. (*Ibid.*) Amber’s therapist believed she and the mother had a strong bond and that it was important their relationship continue. (*Ibid.*) The court appointed a special advocate for one of the other minors testified that minor “loved and missed Mother and had difficulty separating from her.” (*Ibid.*) The special advocate disagreed with the Agency’s recommendation of adoption. (*Id.* at pp. 689-690.) Thus, unlike the instant case, there was overwhelming evidence in *Amber M.* that the mother and the minors had a strong relationship that would be detrimental to the minors to sever.

Turning to the “benefit” prong analysis, we conclude mother failed to demonstrate that her relationship with the children promoted their well-being “to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.” (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) Mother has proffered no evidence to support a finding that the children had a “substantial, positive emotional attachment such that [they] would be greatly harmed” if the relationship were severed.

(*Ibid.*) She did not occupy a parental role in their lives. She did not meet their need for a parent. Visitation never progressed to unsupervised visits. And by the time of the section 366.26 hearing, the children had been out of mother’s custody for nearly three years. In contrast, the children were strongly attached to their relative caregiver, who they listened to, felt safe with, and respected. According to the social worker, the relative caregiver was “just what these children need[ed] to help them overcome the abuse and neglect they [had] suffered.” The children wanted to live with their relative caregiver, who was committed to providing them with a permanent home.

Based on the above, we conclude that the court did not abuse its discretion by determining that the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i), did not apply.

III. DISPOSITION

The court’s order is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.