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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

K.R.,

Defendant and Appellant.

E061165

(Super.Ct.No. RIJ1101264)

OPINION

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

Siobhan M. Bishop, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, and Julie Koons Jarvi, Deputy County  
Counsel, for Plaintiff and Respondent.

K.R. (Mother) appeals from an order terminating her parental rights as to her five daughters: 14-year-old Sa.R. (Sa.), 10-year-old A.A. (A.), eight-year-old M.A. (M.), seven-year-old B.A. (B.), and one-year-old So.R. (So.).<sup>1</sup> On appeal, Mother contends the juvenile court abused its discretion in denying her petition for modification under Welfare and Institutions Code<sup>2</sup> section 388 and that the juvenile court erred in failing to find the “beneficial parental relationship” exception to termination applied. We reject these contentions and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Riverside County Department of Public Social Services (DPSS) on September 13, 2011, after Mother tried to run her boyfriend over with a car while Sa., A., B., and M. were in the car. Mother was arrested for assault with a deadly weapon, domestic violence, and child endangerment. The children reported to a deputy that Mother was “ ‘trying to scare’ ” the boyfriend. The girls were taken into protective custody and placed with a paternal aunt and uncle.

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<sup>1</sup> Mother had another daughter, J.C. (J.), who was also removed from parental custody at the time of her siblings. However, J. turned 18 years old in November 2011. Her case was eventually closed, and she is not a party to this appeal.

Sa., A., M., and B. all shared the same father, while J. had a different father. Both fathers were incarcerated at the time the petition was filed on behalf of these girls in September 2011. So. also had a different father. The fathers are not parties to this appeal.

<sup>2</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

Mother denied that she was trying to run over her boyfriend. She denied any prior incidents of domestic violence or physical altercations between her and her boyfriend. She also denied that she had a substance abuse history or any mental health issues. Mother reported that she was a stay-at-home mother and very involved in her children's school and activities. J. and Sa. confirmed that Mother was involved in the children's school and activities and that they enjoyed spending time with Mother.

Mother had a history with child protective services. In November 2003, Orange County Child Protective Services had placed Sa. and J. in protective custody after their brother accidentally drowned in the family's swimming pool. The pool had no fence or cover and the home was found to be condemned by code enforcement. Allegations of severe neglect were substantiated. Mother was offered services. In January 2004, a report was received alleging physical abuse of Sa. by Mother. Sa. was a dependent child at the time of the investigation, but Mother had weekend visits with Sa. Mother reported that Sa. had slammed her head into a table and a car door had slammed on her head. Mother did not seek medical attention until 11 days after the first incident. Allegations of general neglect were substantiated against Mother. In December 2009, a referral was received alleging Mother and her roommate were known methamphetamine users who stole items to support their drug habit. Allegations of general neglect were unfounded after the social worker determined the children were well cared for, the home was clean and organized with working utilities, and Mother's drug test result was negative.

Mother also had a criminal history. She had been convicted of possession of marijuana in 2000, sentenced to 80 days in jail, and placed on three years of probation. She had also been convicted of perjury and fraud to obtain aid in 2002; petty theft in 2009; and inflicting corporal injury on a spouse/cohabitant as a misdemeanor stemming from the recent incident in September 2011, sentenced to 45 days in jail, and placed on three years of probation.

On September 15, 2011, a petition pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect) and subdivision (g) (no provision for support), was filed on behalf of the children.<sup>3</sup> The following day at the detention hearing, the children were formally detained and a jurisdictional/dispositional hearing was set. The parents were provided with services and visitation.

The children reported that they were happy living with their paternal aunt and uncle, but wanted to return to Mother's care. They all missed Mother, but the younger children appeared to have the most difficulty being separated from Mother as they appeared to have a strong bond with Mother.

At the jurisdictional/dispositional hearing on October 17, 2011, the juvenile court found the allegations in the petition true as amended. The children were declared dependents of the court and returned to Mother's care under family maintenance services.

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<sup>3</sup> The petition was subsequently amended on October 6, 2011.

The four older girls were assessed for mental health services on October 25, 2011. Sa. was diagnosed with “Depression Disorder NOS.” Her therapist reported that Sa. presented with isolation and internalization of problems. She also described the child as being “parentified” and having intrusive thoughts about the witnessed domestic violence. A. was diagnosed with “Post Traumatic Stress Disorder” and also presented with isolation and internalization of problems. Her therapist noted that A. had poor concentration and had admitted to having witnessed incidents of domestic violence between Mother and the boyfriend. M. was diagnosed with “Adjustment Disorder with Anxiety” and also presented with isolation and internalization of problems. M. also admitted to having witnessed incidents of domestic violence between Mother and her boyfriend. B. appeared emotionally stable and happy and required no mental health services. B. was attached to her siblings and Mother.

Mother’s family maintenance services were continued on April 16, 2012. Mother was compliant with her family maintenance services and probationary terms. She was living in Perris, California; was looking for work; and was receiving cash aid, food stamps, and financial support from family members. She was completing her community services, attending a 52-week domestic violence program, and had no further arrests or convictions. She had also completed a parenting program.

However, by May 2012, Mother moved from home to home with her children, and eventually ended up abandoning them on August 16, 2012, with a paternal aunt in Moreno Valley. The aunt did not know Mother’s whereabouts. In addition, Mother had

been discharged from her domestic violence program on June 11, 2012, due to inconsistent attendance, and a bench warrant for her arrest was issued on August 10, 2012.

On September 14, 2012, a section 387 petition was filed to remove Sa., A., M., and B. from Mother's care. The petition alleged that the previous disposition had been ineffective in protecting the children due to Mother's lack of stable housing, abandoning the children with a relative, failing to participate in her case plan, being in violation of probation, and having an arrest warrant issued.

The children were formally detained on September 17, 2012. The children reported that Mother had left them with their paternal aunt and that Mother had brought them food and clothing items. The children desired to live with Mother once she found a place to live.

The children continued to reside in the paternal aunt's home. They had adjusted well to living with the paternal aunt and uncle and they all felt safe in their home. They had been enrolled in school and were developing well. The paternal grandmother also resided in the home and had provided the children with additional support. Mother had a strained relationship with the paternal aunt and grandmother and did not visit the children regularly. The youngest child, B., had a strong bond with Mother, and appeared to be having the most difficulty being separated from Mother. Mother had failed to take responsibility for her actions and blamed the paternal aunt and grandmother for the children being removed from her care.

On October 16, 2012, the juvenile court found the allegation in the section 387 petition true, and the children were removed from Mother's care. The court ordered Mother to participate in her case plan.

In January 2013, Mother gave birth to her sixth daughter, So.R. The social worker interviewed Mother at the hospital. At that time, Mother informed the social worker that she had enrolled in a domestic violence program in December 2012 and a substance abuse program on January 10, 2013. Mother also stated that she had been arrested for possession of drug paraphernalia in October 2012, but claimed that it was not hers; and that the last time she had used methamphetamine was in October 2012. Mother, however, did not believe she had a drug problem. The social worker informed Mother that because her other children were not in her care and she had not made adequate progress in her case plan, So. would be removed from Mother's care.

On January 18, 2013, DPSS filed a petition on behalf of So. pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).

On January 22, 2013, the juvenile court formally detained So. And, on February 13, 2013, the court found the allegations in the petition true and declared the child a dependent of the court. Mother was provided with reunification services and visitation. So. was placed in a foster home while DPSS certified the paternal aunt and uncle's home so that she could be placed with her half siblings. So. was placed with her half siblings on October 23, 2013.

Mother had visited So. every Tuesday and Saturday. The maternal grandmother, half siblings, and Mother all attended the Saturday visits with So. The half siblings were happy to visit with So. Mother was appropriate during the visits and there were no concerns.

On March 7, 2013, Mother was incarcerated for 170 days for violating her probation. She was not in compliance with her domestic violence and anger management classes. Mother was to be released from jail on May 22, 2013, and be placed on house arrest. She had completed her house arrest on July 4, 2013, and was discharged from probation. Mother had no visitation with the children while she was incarcerated. However, she had maintained telephone contacts with the children, which were consistent and appropriate. Prior to her incarceration, Mother had visited the children on a weekly basis, and the visits were consistent and appropriate.

The children continued to reside in the paternal aunt's home and were developing well. They all reported that they felt safe and comfortable in the home. The paternal aunt, uncle, and grandmother were meeting the girls' needs and providing them with a safe and nurturing home. However, the girls missed Mother. Sa. was struggling in school and often appeared in a depressed mood, rarely speaking unless spoken to. Sa. reported that she had isolated herself in school and at home because she missed Mother and wanted to go home. On February 25, 2013, Sa. reported that she desired to participate in counseling to address her issues. A. reported that she cried in school and was referred to a school counselor. The counselor reported that A. was happy in her

paternal aunt's home but that she missed Mother and desired to go home; and that A. continually made excuses for Mother and why she had not completed her classes. A. reported that she felt better after speaking with the counselor. M. appeared happy in her placement and appeared to be bonded to her paternal grandmother. B. reported that she missed Mother, but appeared to be doing well in her placement and was also bonded to her paternal grandmother.

By August 2013, Mother had completed eight individual counseling sessions and missed three. She had also completed nine sessions of anger management classes. And, on April 16, 2013, Mother had enrolled in an intensive outpatient substance abuse program with a completion date of August 6, 2013. She had been attending the substance abuse program three times a week as well as Narcotics Anonymous (NA) meetings twice a week. Mother had also been randomly drug testing. She had tested positive for methamphetamine on June 17, 2013; and had refused to submit to a drug test on June 13, 2013, which was considered to be a positive test. Mother had tested positive for methamphetamine again on July 17, 2013. Mother was participating in her parenting classes and was reported to be benefitting from the program. She, however, had no stable housing and was unable to sustain payment for rent for a home for more than two months. She moved from home to home and was residing with her friend.

On August 27, 2013, Mother enrolled in an inpatient substance abuse program. However, she discharged herself from the program on September 8, 2013, due to the distance from her children. Mother continued to attend her NA/Alcoholics Anonymous

(AA) meetings and was on a waiting list for another inpatient program. She, however, had been discharged from the intensive outpatient program on August 22, 2013, due to her noncompliance with the program rules. She had missed a total of 15 group sessions and continued to test positive for drugs. The social worker had attempted to refer Mother back to the intensive outpatient program, but the program refused to readmit Mother because Mother required an intensive inpatient substance abuse program.

On September 26, 2013, Mother enrolled in an inpatient substance abuse treatment program with a projected completion date of November 24, 2013. Mother reported that she had used methamphetamine daily for approximately 15 years.

Mother continued to regularly visit her children. She visited her older girls twice a week at the paternal relatives' home. She also visited So. every Tuesday and Sunday for eight hours with the older children at the paternal relatives' home. The visits were appropriate and the older children appeared excited about the visits.

By the October 16, 2013 12-month review hearing in regards to the older children, Mother was residing with her adult daughter, was unemployed, and had no source of income. Mother reported that she was residing with her eldest daughter temporarily until she could get into another inpatient treatment program. The girls were doing well and their relative caretakers were meeting their needs. Sa. was doing better in school and seeing a therapist. The therapist reported that Sa. was depressed and missed Mother and desired to return to her home. A. was also seeing the therapist and continued to see her counselor at school. The therapist reported that A. was bonded to her caregivers even

though she missed Mother and wanted to return to her care. M. was also seeing the therapist. The therapist reported that M. was happy in her placement and bonded to her caregivers. B. reported that she missed Mother but appeared to be doing well with her caregivers. She was attached to her paternal grandmother and bonded to her caregivers.

A combined contested six-month review hearing as to So. and a 12-month review hearing as to the older girls was held on November 14, 2013. At that time, the court terminated Mother's services and set a section 366.26 hearing.

By March 18, 2014, Mother was renting a room from a friend. She was unemployed and was financially supported by her mother. She had completed the 45-day inpatient drug treatment program and was attending an outpatient substance abuse program. She was on probation but was unsure of her status. She continued to have supervised visits with the children once a month at the paternal uncle and aunt's home. The paternal uncle and aunt (the prospective adoptive parents) were open to the parents maintaining contact and visitation with their children.

The children continued to thrive developmentally, emotionally, and educationally in the home of the prospective adoptive parents. They were emotionally stable and attached to their prospective adoptive parents. They appeared very happy and comfortable in their prospective adoptive home, and were handling the separation from Mother well. The older girls were aware that they would not be reunifying with Mother and were open to being adopted by their prospective adoptive parents. The therapist reported that Sa., A., and M. had completed their treatment goals and had come to terms

with being separated from Mother and were willing to be adopted by their prospective adoptive parents. Sa. and A. understood the meaning of adoption, had a strong attachment to the prospective adoptive family, and had desired to remain in the home and to be adopted. M., B., and So. were too young to understand the meaning of adoption, but appeared very happy and comfortable in the home, and had developed a strong attachment to the prospective adoptive parent family. The prospective adoptive parents had continued to provide a stable, safe, and loving home to the girls and were willing and ready to provide a permanent home for the girls. The prospective adoptive parents reported that they have had a relationship with the girls their entire lives; that they love the girls; and that they were committed and dedicated to the girls.

On May 6, 2014, Mother filed a request to change court order pursuant to section 388, seeking family maintenance services or in the alternative reunification services with liberalized visitation. In support, Mother submitted documentation to show that she had completed an inpatient substance abuse program, an intensive outpatient program, and a parenting program; that she had randomly drug tested with negative results during the program; and that she was attending a 12-step program. She also claimed that she had maintained consistent visits; the children were bonded to her; and that she had secured appropriate housing.

A hearing on Mother's section 388 petition was heard on May 13, 2014. At that time, Mother testified that she had completed a two-month inpatient and a four-month outpatient substance abuse program after her services were terminated, a 12-step

program, a parenting program, and a 16-session anger management program. She also stated that she had tested negative throughout the substance abuse programs and had maintained sobriety; that she was attending NA/AA meetings; and that she had benefitted from the services. She acknowledged that she did not complete a 52-week anger management program as required by her probation, but that she did time in custody instead. She stated that she had only participated in four sessions of the program. Mother also testified that she had consistently maintained visits with the children; that the children were bonded to her; that they showed her love and affection and hugged her; and that the children cry after the visits. She believed that she had a parent-child bond with the children. In regard to housing, Mother stated that she was renting a room in a four-bedroom house; that the room had space for all the children; that she was told by the “worker” the home would be approved for a “temporary” stay of the children; and that she would rent another room in the house if the children lived with her. Mother also stated that she had a part-time job and would be financially able to support them.

Following argument from the parties, the juvenile court denied Mother’s section 388 petition, finding Mother’s circumstances had changed but that it was not in the children’s best interest to grant the petition and delay their permanency.

The juvenile court then proceeded to the contested section 366.26 hearing. Mother’s counsel argued that Mother’s parental rights should not be terminated because the parental-beneficial relationship exception to adoption applied. County counsel acknowledged that Mother had a bond with the children, but that adoption outweighed

the children's relationship with Mother. Counsel also noted that the adoptive parents were willing to continue contact with Mother; that the children indicated a desire to remain in their adoptive home and be adopted; and that the children were in a stable, loving home with relatives.

The juvenile court found the children adoptable, no exception to termination of parental rights applied, and terminated parental rights.

Mother appealed.

## II

### DISCUSSION

#### A. *Denial of Section 388 Petition*

Mother contends the juvenile court erred in denying her section 388 petition. We disagree.

Section 388, subdivision (a), permits anyone having an interest in a dependent child to petition the juvenile court for a hearing to change, modify or set aside a previous order on the ground of changed circumstances or new evidence. A parent seeking to change an order of the dependency court bears the burden of proving by a preponderance of the evidence that (1) there is a change in circumstances warranting a change in the order, and (2) the change would be in the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) “Not every change in circumstance can justify modification of a prior order. [Citation.] The change in circumstances must relate to the purpose of the order and be such that the modification of the prior order is

appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order. [Citations.]” (*In re A.A.* (2012) 203 Cal.App.4th 597, 612 [Fourth Dist., Div. Two].)

The denial of a section 388 petition is reviewed for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) The juvenile court’s ruling will not be disturbed on appeal unless the trial court has exceeded the limits of discretion by making an arbitrary, capricious, or patently absurd determination, i.e., the decision exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 (*Stephanie M.*)) “ “When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.]’ [Citations.]” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) “It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion . . . .” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522 (*Kimberly F.*)) Having reviewed the record as summarized above, we conclude the juvenile court properly exercised its discretion by denying Mother’s section 388 petition.

Here, the court denied Mother’s section 388 petition because Mother failed to establish that the proposed change would be in the children’s best interest. The ruling is not an abuse of discretion. Parent and child share a fundamental interest in reuniting up to the point at which reunification efforts cease. (*In re R.H.* (2009) 170 Cal.App.4th 678,

697.) Mother's reunification services were terminated on November 14, 2013. By the point of a section 366.26 hearing to select and implement a child's permanent plan, however, the interests of the parent and the child have diverged. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.) Therefore, after reunification efforts have terminated, the court's focus shifts from family reunification toward promoting the child's needs for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) "[I]n fact, there is a rebuttable presumption that continued foster care is in the best interest of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child." (*Stephanie M., supra*, 7 Cal.4th at p. 317.)

In arguing that the requested change in this case is in the children's best interest, Mother focuses on the three factors set out in *Kimberly F., supra*, 56 Cal.App.4th 519. The *Kimberly F.* court, after rejecting the juvenile court's comparison of the biological parent's household with that of the adoptive parents as the test for determining the child's best interest, identified three factors, not meant to be exclusive, that juvenile courts should consider in assessing the issue of the child's best interest: (1) the seriousness of the problem that led to dependency and the reason the problem had not been resolved by the time of the final review; (2) the strength of the relative bonds between the child to both the child's parent and the child's caretakers and the length of time the child has been in the dependency system in relation to the parental bond; and (3) the degree to which the

problem that led to the dependency may be easily removed or ameliorated, and the degree to which it actually has been. (*Id.* at pp. 530-532.)

However, the *Kimberly F.* factors conflict with the Supreme Court's holding in *Stephanie M.* that stability and continuity are the primary considerations in determining a child's best interest in the context of placement. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) Furthermore, *Kimberly F.* also fails to take into account our Supreme Court's analysis in *Stephanie M.* of the child's best interest once reunification efforts have failed. Moreover, the same appellate court that decided *Kimberly F.* recently declined to apply the *Kimberly F.* factors "if for no other reason than they do not take into account the Supreme Court's analysis in *Stephanie M.*, applicable after reunification efforts have been terminated." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527 (*J.C.*)). The *J.C.* court explained, "[t]o understand the element of best interests in the context of a 388 petition filed, as in this case, on the eve of the .26 hearing, we turn to the Supreme Court's language in *Stephanie M.*, *supra*, 7 Cal.4th 295 . . . ." (*J.C.*, at p. 526.) The court instead followed the direction of our Supreme Court, "holding that after reunification services have terminated, a parent's petition for either an order returning custody or reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability." (*Id.* at p. 527.)

On this record, Mother did not establish that the children's need for permanency and stability would be advanced by reunification efforts. It is important to keep in mind that, where, as here, the juvenile court's ruling is against the party who has the burden of proof, it is extremely difficult for Mother to prevail on appeal by arguing the evidence compels a ruling in her favor. Unless the juvenile court makes specific findings of fact in favor of the moving party, we presume the juvenile court found Mother's evidence lacked sufficient weight and credibility to carry the burden of proof. (See *Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)

In denying Mother's section 388 petition in regard to the best interest of the children, the juvenile court, noting the children had been out of Mother's home for a long time in their short lives, stated, "And if mom were to be provided services, it would only be six months of services. And she's really, as county counsel pointed out, finally gotten it and understands what services she needed to do. Sometimes it does take a parent with addiction or other issues to realize that. [¶] Seeing that these kids have been removed for that length of time, this Court cannot make a finding that it would be in their best interest . . . to grant mom additional services to prolong their permanency." Mother's petition failed to present evidence to show how granting the section 388 petition would advance the children's need for permanency and stability. Although Mother had shown changed circumstances by the time of the section 366.26 hearing, Mother still had no stable, permanent housing. Meanwhile, the older children had been provided with a stable, loving home since September 12, 2012, and So. since October 23, 2013. The

children were thriving and continuing to make positive strides in their development. The girls were aware that they would not be reunifying with Mother and wanted to be adopted by the prospective adoptive parents. The girls had a strong, loving attachment to the prospective adoptive family; and the prospective adoptive parents were dedicated and committed to providing the girls with a loving, stable, and safe home. “At this point in the proceedings, on the eve of the selection and implementation hearing, the children’s interest in stability was the court’s foremost concern, outweighing any interest mother may have in reunification.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.)

It is not in the children’s best interest for permanence to be delayed for an unknown or indefinite period of time, with no certainty or even likelihood Mother could progress to the point of obtaining custody of the children. Given that Mother had abused methamphetamine on a daily basis for about 15 years and had a number of previous failed efforts at treatment, her recent sobriety failed to show that she could provide the children with stability and permanency or that the requested change was in the children’s best interest. (See, e.g., *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [parents’ three-month rehabilitation efforts were insufficient in light of “extensive histories of drug use and years of failing to reunify with their children”]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 205-206 [mother being clean for four months was insufficient in light of 23-year substance abuse history]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686 [mother being clean for 372 days was insufficient in light of her 17-year substance abuse history and two previous relapses]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48-49

[juvenile court did not abuse its discretion in finding no changed circumstances based on “the parents’ extensive drug histories; pattern of maintaining drug treatment only when motivated by the desire to reunify the family and required by outside agencies; and Casey’s young age[, which] meant that she was too young to be able to protect herself if the parents should relapse”].)

In sum, there is insufficient evidence that the delay in permanency planning would be in the children’s best interest. As much as Mother was to be commended for her efforts to become an effective parent and resolve her drug addiction, the fact remained that the children could not safely be maintained in Mother’s care or that Mother could provide the children with stability and permanency. Under these circumstances, Mother’s showing did not compel the juvenile court to find that allowing Mother further services would be in the children’s best interest. Therefore, pursuant to *Stephanie M.*, *supra*, 7 Cal.4th at page 317, we conclude the juvenile court did not abuse its discretion by denying Mother’s section 388 petition.

B. *Beneficial Parent-Child Relationship Exception*

Mother also contends the juvenile court erred in finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B), did not apply to preclude the termination of parental rights.

After reunification services are denied or terminated, “ ‘the focus shifts to the needs of the child for permanency and stability.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) A hearing under section 366.26 is held to design and implement a permanent plan for the child. At a section 366.26 hearing, the court must terminate parental rights and order the child placed for adoption if it determines, under the clear and convincing standard, that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).)

“ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*In re Celine R., supra*, 31 Cal.4th at p. 53; see § 366.26, subd. (c)(1).) “ ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ ” (*In re Celine R., supra*, at p. 53.) A statutory exception to the general rule requiring the court to choose adoption exists where “[t]he court finds a *compelling reason* for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B), italics added) because “[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); see *In re Casey D., supra*, 70 Cal.App.4th at p. 50.) There is no dispute here that Mother had maintained regular visitation with the girls.

In deciding whether the parent-child beneficial relationship exception applies, “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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) “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.” (*Ibid.*) The parent-child relationship must “promote[] 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.” (*Ibid.*)

The parent-child relationship “exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent.” (*Id.* at p. 1350.) Even a “loving and happy relationship” with a parent does not necessarily establish the statutory exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

“The *Autumn H.* standard reflects the legislative intent that adoption should be ordered unless exceptional circumstances exist, one of those exceptional circumstances being the existence of such a strong and beneficial parent-child relationship that terminating parental rights would be detrimental to the child and outweighs the child’s need for a stable and permanent home that would come with adoption.” (*In re Casey D.*,

*supra*, 70 Cal.App.4th at p. 51.) “[T]he *Autumn H.* language, while setting the hurdle high, does not set an impossible standard nor mandate day-to-day contact.” (*Ibid.*) “Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship. A strong and beneficial parent-child relationship might exist such that termination of parental rights would be detrimental to the child, particularly in the case of an older child, despite a lack of day-to-day contact and interaction.” (*Ibid.*) “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; see *In re Celine R.*, *supra*, 31 Cal.4th at p. 53.)

A parent claiming the applicability of the parent-child relationship exception has the burden of proof. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315; *In re C.B.* (2010) 190 Cal.App.4th 102, 133-134; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.) The parent must show both that a beneficial parental relationship exists *and* that severing that relationship would result in great harm to the child. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) A juvenile court’s finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court’s determination that the relationship does or does not constitute a “compelling reason” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*In re Bailey J.*, *supra*, 189

Cal.App.4th at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.) A juvenile court's ruling on whether there is a "compelling reason" is reviewed for abuse of discretion because the court must "determine the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption." (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315, italics omitted.)

Mother argues that substantial evidence supports the conclusion that a beneficial parental relationship existed. However, since it is the parent who bears the burden of producing evidence of the existence of a beneficial parental relationship, it is not enough that the evidence supported such a finding; the question on appeal is whether the evidence compels such a finding as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) As the court in *In re I.W.* discussed, the substantial evidence rule is "typically implicated when a defendant contends that the plaintiff succeeded at trial in spite of insufficient evidence." (*Ibid.*) When, however, the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, "it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing

court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the [Mother's] evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding' [in Mother's favor]. [Citation.]" (*Ibid.*) Accordingly, unless the undisputed facts established the existence of a beneficial relationship as a matter of law, a substantial evidence challenge to this component of the juvenile court's determination cannot succeed. (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

Here, even if Mother had established the existence of a beneficial parental relationship, she cannot show the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the girls as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*In re Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M., supra*, 7 Cal.4th at pp. 318-319.) " 'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " (*Id.* at p. 319.)

Here, Mother did not introduce any evidence showing the girls would be greatly harmed by the termination of her parental rights. The girls were strongly bonded to the prospective adoptive parents and the paternal grandmother who resided in their home. The prospective adoptive home was the only stable, secure home the girls had ever known. The girls were comfortable in the home and were thriving emotionally, educationally, and developmentally. They looked to the prospective adoptive parents for love, comfort, and security. Although the older girls were initially depressed, acted out in school, missed Mother, and desired to live with her, by the time of the section 366.26 hearing, the girls were emotionally stable and had a positive “self concept.” The therapist made this observation after the girls had lived in a stable home with the prospective adoptive parents for over a year and a half. After living with their prospective adoptive parents for over a year and a half, the girls presented as “very happy and well behaved children.” They had appeared to handle the separation from Mother well, were aware they would not be reunifying with Mother, were open to being adopted by their relative prospective adoptive parents, and desired to remain with their prospective adoptive parents. By the time of the 366.26 hearing, there was no evidence to show that the girls were deeply upset or always cried following their visits with Mother or that the girls suffered from depression, isolation, parentification, posttraumatic stress disorder, anxiety, or adjustment disorder. Rather, the record indicates that the girls, while enjoying their visits with Mother, were attached, happy, and bonded to their prospective adoptive parents and that they were thriving in their home. There was no evidence whatsoever that

the girls would suffer great detriment if parental rights were terminated. Consequently, the juvenile court could reasonably conclude that termination of Mother's parental rights would have no detrimental impact on the girls.

Mother relies on *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*) in support of her position. However, that case is distinguishable. *Brandon C.* is a social services agency's appeal from an order for guardianship rather than adoption based on the beneficial parental relationship exception. (*Id.* at p. 1533.) In that case, the court held that substantial evidence supported the juvenile court's decision to find the exception applicable based on the children's emotional attachment to their mother. (*Id.* at pp. 1534-1538.) The question before us, however, is whether the juvenile court abused its discretion by finding the exception not applicable. *Brandon C.* does not provide any guidance on that issue.

Mother also likens this case to *In re S.B.* (2008) 164 Cal.App.4th 289. In that case, the appellate court reversed a termination order, holding that, contrary to the juvenile court's ruling, the only reasonable inference from the evidence was that the beneficial parental relationship exception applied. In reaching that decision, the court noted that the father maintained regular, consistent and appropriate visitation with the child; he was the child's primary caretaker for three years; when she was removed from his custody he immediately acknowledged his drug use was untenable, started services, maintained his sobriety, sought medical and psychoanalytic services and complied with every aspect of his case plan; and after a year apart the child continued to display a strong

attachment to her father. (*Id.* at p. 298.) The court stated: “The record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be *greatly harmed* by the loss of her significant, positive relationship with [her father].” (*Id.* at pp. 300-301, italics added.)

However, the same court which decided *In re S.B.* later warned that it was an extraordinary case and must be viewed in light of its particular facts. The court emphasized that the opinion “does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is ‘some measure of benefit’ in continued contact between parent and child.” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937; see *In re C.F.* (2011) 193 Cal.App.4th 549, 557-559.) Rather, there must be evidence that the 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” and that severance of the relationship “would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Here, there simply is no such evidence.

In sum, the record supports the juvenile court’s determination that the beneficial parent-child relationship exception did not apply in this case.

III  
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

KING  
J.