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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re C.M. et al., Persons Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.K.,

Defendant and Appellant.

E061432

(Super.Ct.No. SWJ1200686)

OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso,  
Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, Anna M. Marchand, Deputy County  
Counsel, for Plaintiff and Respondent.

## **FACTUAL AND PROCEDURAL HISTORY**

On September 17, 2012, plaintiff and respondent Riverside County Department of Public Social Services (Department) filed a juvenile dependency petition under Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (b) and (g), on behalf of C.M. (a male, born 2005); M.C. (a female, born 2009); R.K. (a male, born 2010); and KL.K. (a female) and KA.K. (a male—twins born 2011) (“the Twins”).<sup>2, 3</sup>

On December 11, 2012, the Department filed a second amended petition. It alleged that under section 300, subdivision (b), the children were at risk of harm because defendant and appellant A.K. (mother), and R.B., the father of the younger three children, were arrested on September 13, 2012, for being under the influence and in possession of a controlled substance for sale, and child endangerment; had prior child welfare histories; neglected the safety and well-being of the children in that R.K. and the Twins were found to have a diaper rash; and mother abused controlled substances. As to C.M.’s and MK’s respective fathers, the petition alleged that they failed to provide for the children and that their whereabouts were unknown.

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

<sup>2</sup> M.C. is the only subject child of this appeal.

<sup>3</sup> On July 25, 2014, we incorporated the record in a related case, case No. E060811, in the record of this case. In that appeal, which is pending in this court, mother appeals the termination of her parental rights as to R.K. and the Twins.

The juvenile court found R.B. to be the presumed father of R.K. and the Twins; J.M. to be the presumed father of C.M.; and A.C. to be the presumed father of M.C.<sup>4</sup> Mother denied having Indian heritage.

The Department reported that the children came to its attention because mother was selling controlled substances in the children's presence. When the family home was searched on September 13, 2012, authorities found controlled substances and paraphernalia, which resulted in the arrest of mother and R.B. In May of 2008, C.M. was previously removed from mother's care because of substance abuse issues; mother successfully reunified with C.M. in July of 2009. The Department recommended for the court to find the allegations true, with the exception that mother was currently abusing controlled substances (b-2), and that mother and R.B. remained incarcerated (g-1 and g-2).

The Department recommended that the court declare the children dependents of the court, remove them from parental custody, provide mother and R.B. reunification services with the children, but deny services to the fathers of C.M. and M.C. C.M. and R.K. were placed together in one foster home, whereas M.C. and the Twins were placed together in another foster home. The parents visited the children on a regular basis, twice a week; the visits were appropriate.

At the contested jurisdiction and disposition hearing held on December 11, 2012, mother was not present. She, however, was represented by her counsel. The court

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<sup>4</sup> A.C. is also referred as C.C.M. in the record. A.C. did not participate in any reunification services and did not reunify with M.C. He is not a party to this appeal.

established jurisdiction and ordered reunification services. The court ordered mother to participate in counseling, parenting education, substance abuse treatment, and substance abuse testing.

On December 27, 2012, mother was arrested and incarcerated through February of 2013. On April 17, 2013, mother was again arrested and incarcerated as a result of federal drug charges. By the time of the six-month review hearing, mother was at the Correctional Corp of America Detention Center in San Diego. Mother was unable to participate in reunification services and visits because of her incarcerations.

Initially, R.K. had been placed with C.M.; and M.C. had been placed with the Twins. Their placements were switched in December of 2012. R.K. was placed with the Twins, and M.C. was moved to share a foster home with C.M. C.M. and M.C. fought with each other on a daily basis. M.C. had also been violent and aggressive with the Twins. R.K. and the Twins were bonded to their foster family.

On May 24, 2013, mother informed the maternal grandmother that mother had received a letter from the Department advising her that the Department was recommending termination of her parental rights. In a status review report filed on May 30, 2013, the Department recommended that the court terminate reunification services and set a permanency planning hearing.

On June 14, 2013, the juvenile court signed form JV-450, Order for Prisoner's Appearance, to secure mother's presence at the six-month review hearing.

In an addendum report filed on July 22, 2013, the Department indicated that per mother's criminal defense counsel, her criminal charge carried a mandatory five-year

sentence, but mother was attempting to plea to one to three years because she was mainly a user at the time, and not “very” involved in the sale of controlled substances. The report also summarized various relatives who came forward and wanted to be evaluated for the children’s placement. The evaluations were pending and the Department’s recommendation remained the same—to terminate family reunification services.

At the July 29, 2013 six-month review hearing, mother was not present but was represented by counsel. The court admitted into evidence a July 11, 2013, letter from mother requesting that the children be placed with family members and that she be permitted contact visits at her facility. Several of the relatives were present at the hearing. The court adopted the Department’s recommendations, terminated reunification services for all the parents, and set the section 366.26 hearing. The court permitted reasonable telephone and written communication for all parents. The court granted the foster parents’ request to be declared de facto parents of R.K. and the Twins.

On August 1, 2013, the clerk sent a written notice to mother’s prison facility in San Diego advising her of her writ rights. On August 14, 2013, the Department sent a notice of the section 366.26 hearing to mother’s prison facility in San Diego. On October 3, 2013, mother was personally served with notice of the selection and implementation hearing.

In the section 366.26 report, the Department recommended that the court find the children adoptable and terminate parental rights, but to continue the hearing for 90 days. All children remained in foster care, except M.C.; she was placed with her paternal grandparents on October 31, 2013. C.M. continued in therapy twice a week to address

his feelings of sadness, anger, and abandonment. M.C. also continued in twice monthly therapy because of her night terrors and tantrums. Although the night terrors happened less frequently, she continued to have tantrums. On August 19, 2013, R.K. was diagnosed with Autistic Disorder and started receiving services from the Comprehensive Autism Center. The Twins had developmental problems, but continued to do well.

The paternal grandmother wanted to adopt M.C. and the foster parents of the three younger children wanted to adopt them. A maternal uncle was being evaluated for C.M.'s placement. The maternal grandmother was told that her studio apartment was too small for placement of any of the children.

Mother and the extended family called the children at a minimum on a monthly basis, and the children would visit the maternal grandmother and great-grandmother every other week. The maternal grandmother was observed by the social worker to be very caring with the children. C.M., M.C. and R.K. enjoyed the visits; the Twins were fussy during the visits.

At the originally set section 366.26 hearing on November 26, 2013, the Department requested a continuance to complete relative and adoption assessments. The court continued the matter to February 27, 2014.

On December 5, 2013, the court signed an Order for Prisoner's Appearance to secure mother's presence at the hearing in February. The order was addressed to "Correct Corp. of America." On January 13, 2014, the Department sent notice of the hearing to mother to Correctional Corp of America.

The Department's report for the hearing recommended that the court find R.K. and the Twins adoptable and terminate parental rights. Attached to the report was the preliminary adoption assessment for the foster parents. The foster parents did not have any criminal or child abuse histories, and were willing to adopt the children. The Department recommended a 120-day continuance of the section 366.26 hearing for C.M. and M.C. in order to complete the adoption assessments for their respective relative caretakers. On February 8, 2014, C.M. was placed with his maternal uncle and was very happy to be with family. M.C. remained in the home of her paternal grandparents.

At the hearing on February 27, 2014, R.B.'s attorney, Ms. McPhee, appeared on behalf of mother's attorney, Mr. Vinson. McPhee requested a continuance because mother was moved to a federal prison, and so that her counsel could be present. The Department requested a continuance to complete the adoption assessments. The children's counsel declared a conflict in representing the younger three children in addition to C.M. and M.C. The court appointed new counsel for R.K. and the Twins. The court continued the hearing to March 3, 2014, for the presence of mother's counsel.

At the March 3, 2014, section 366.26 hearing, mother's counsel requested a continuance of the hearing because he had recently learned the Department had a different address for mother since she moved from her facility in San Diego; the Department did not previously inform mother's counsel of her move. Mother's counsel stated his attempts to contact mother at the old facility were unsuccessful and that the Department's notice and report for the hearing were sent to the old facility; hence, mother had not received these documents. Mother's counsel believed that mother would want

the sibling relationship to continue and oppose the termination of parent rights. Counsel wanted a continuance for proper notice and to make contact with mother.

Counsel for R.K. and the Twins indicated that according to the children's foster mother, mother had been calling the children about three times a week and had been moved to a new facility around November of 2013. Counsel was not opposed to a brief continuance to send notice to mother's new address. The Department opposed the continuance request stating that it was relieved from giving notice to the parents at the November 26, 2013, hearing.

The court denied the continuance request as to R.K. and the Twins; found them adoptable; denied the sibling relationship exception raised by C.M. and M.C.; and terminated parental rights. The court continued the matter for C.M. and M.C.

A social worker interviewed M.C. on April 16, 2014, and found her to be very happy. M.C.'s paternal grandmother proceeded with an adoption application and was committed to adopting M.C. M.C. was bonded to her grandmother and the other residents of her home.

On June 26, 2014, the juvenile court found M.C. adoptable and terminated parental rights. On appeal, mother contends that the juvenile court abused its discretion in terminating her parental rights as to M.C. For the reasons set forth below, we shall affirm the judgment.

## DISCUSSION

### A. THE JUVENILE COURT PROPERLY TERMINATED MOTHER'S PARENTAL RIGHTS AS TO M.C.

Mother's sole contention on appeal is that the trial court erred in terminating her parental rights because of the beneficial sibling relationship shared between M.C. and C.M.

#### 1. *LEGAL BACKGROUND AND STANDARD OF REVIEW*

Once reunification services have been terminated, the “focus shifts to the needs of the child[ren] for permanency and stability,” and the juvenile court must select a permanent plan for the children under section 366.26. (*In re Celine R.* (2003) 31 Cal.4th 45, 49, 52 (*Celine R.*), quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The Legislature has established that, where possible, adoption is the preferred permanent plan. (§ 366.26, subd. (b); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) “Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.” (*Celine R.*, at p. 53, quoting *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*); accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809 [“there is a strong preference for adoption over nonpermanent forms of placement”].)

At a section 366.26 hearing, if there is clear and convincing evidence that the children are likely to be adopted, the court must terminate parental rights and place the children for adoption unless one of the exceptions specified in section 366.26, subdivision (c)(1) applies. (§ 366.26, subd. (c)(1); *Cynthia D. v. Superior Court* (1993) 5

Cal.4th 242, 249-250.) The parents have the burden to show that the termination of parental rights would be detrimental to the children under one of the statutory exceptions. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

In reviewing a juvenile court's ruling on the applicability of the statutory exceptions to termination of parental rights, courts have routinely applied the substantial evidence standard of review. (E.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [parental relationship exception]; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947 [sibling relationship exception]; *In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251 [same].) However, in *Jasmine D.*, the first appellate district found that the appropriate standard is abuse of discretion.<sup>5</sup> (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351; accord *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) The *Jasmine D.* court noted that, to apply an exception to termination of parental rights, the juvenile court must find a "compelling reason for determining that termination would be detrimental to the child," which is "a quintessentially discretionary determination." (*Jasmine D.*, at p. 1351, quoting § 366.26, subdivision (c)(1).) The *Jasmine D.* court noted, however, that the practical differences between the two standards of review are not significant in the context of reviewing termination orders, and that both standards give broad deference to the trial court's

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<sup>5</sup> Although *Jasmine D.* addressed the beneficial parental relationship exception, the analysis applies equally to the sibling relationship exception, which also requires the juvenile court to find a "compelling reason" to apply the exception. (§ 366.26, subd. (c)(1).)

judgment. (*Jasmine D.*, at p. 1351.) We need not address the issue here, as we would affirm under either standard.

2. *THE BENEFICIAL EXCEPTION DID NOT APPLY TO THIS CASE*

In this case, mother contends that the juvenile court's order terminating her parental rights be reversed under section 366.26, subdivision (c)(1)(B)(v). In order to apply the sibling relationship exception, however, mother needed to show that M.C. enjoyed a significant relationship with her brother, C.M., to the extent that their relationship outweighed the benefits of adoption.

Section 366.26, subdivision (c)(1)(B)(v), applies if a court finds that termination would be detrimental to a child due to a:

“[S]ubstantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.”

(§ 366.26, subd. (c)(1)(B)(v).)

“Reflecting the Legislature's preference for adoption when possible, the ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a ‘compelling reason’ for concluding that the termination of parental rights would be ‘detrimental’ to the child due to ‘substantial interference’ with a sibling relationship.’

[Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*Celine R.*, *supra*, 31 Cal.4th at p. 61.)

In this case, mother contends as follows: “Termination of parental rights will substantially interfere with the sibling relationships in this case. Specifically, not only did [M.C.] live with [C.M.] prior to her detention from parental custody, but during most of her stay in foster care and until her placement with the paternal grandparents in October 2013. But even after the placement, she had consistent monthly visits and telephone contact with [C.M.], which the Department was so adamant that had to continue as it recognized this sibling relationship needed to be preserved.” In sum, mother seems to be arguing that the Department was of the opinion that the sibling relationship required preservation. This argument, however, is not supported by the record. There is no indication that a social worker was requiring caregivers to provide monthly sibling visits because of the bond between the children. Instead, it is likely that the Department was facilitating sibling visits so that the respective caregivers would remain in compliance with the juvenile court’s order for sibling visits. Moreover, the Department has an obligation and duty to facilitate ongoing sibling interaction. Section 16002 provides:

“When placement of siblings together in the same home is not possible, a diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent

interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child.” (§ 16002, subd. (b).)

Moreover, previously shared residences and common past experiences do not automatically result in strong sibling bonds. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.) Here, for example, there is no evidence to support that shared time between M.C. and C.M. resulted in a sibling relationship so closely bonded that its maintenance outweighed the benefits of adoption for M.C. In fact, there is no evidence that M.C. enjoyed any special sibling relationship with C.M. The limited evidence regarding their relationship was that during a conversation about sibling visits on February 26, 2014, C.M.’s caregiver reported that C.M. missed M.C. The juvenile court summed it up best:

“As to the sibling exception, there’s absolutely zero information in this record that the children enjoy any special sibling relationship, other than the fact that they are siblings, and they, prior to removal, resided in the same home. There’s no evidence. There’s no evidence of either child suffering in any way, whatsoever, based on the fact that they are in separate homes. So I’m at a loss as to what facts the Court could even point to[,] to suggest that there would be a detriment suffered by—well, either child for that matter, if the Court severed parental rights as to M.C.”

In her reply brief, mother argues that “the juvenile court erred when it made a statement that ‘zero’ information was provided as that information appeared in the delivered service log notes attached to the Department’s report.” We disagree. The information provided in the service log notes simply documented the visits that were being arranged between M.C. and C.M. There is nothing in the service log notes that

indicated that the two siblings shared such a strong bond that severing this bond would be detrimental to them.

Based on the above, we find that substantial evidence supports the juvenile court’s finding that the sibling exception did not apply. Therefore, the court did not abuse its discretion in terminating mother’s parental rights. The evidence demonstrated that the children were thriving in their respective placements, and, in spite of limited contact between the siblings, exhibited no signs of detriment. Moreover, “even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*Celine R., supra*, 31 Cal.4th at p. 61.) Adoption provides a child the opportunity for complete emotional commitments from the adopting parents. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) Here, M.C. is entitled to the permanency provided by adoption. The juvenile court’s order is affirmed.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

KING  
Acting P. J.

CODRINGTON  
J.