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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

L.D.,

Defendant and Appellant.

E063109

(Super.Ct.No. RIJ117833)

O P I N I O N

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

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and  
Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant, L.D. (Mother), is the mother of three children declared dependents of the juvenile court in 2012: I.S., a boy born in May 2003, B.M., a girl born in August 2007, and R.M., a boy born in July 2008. I.S. has a different father than B.M. and R.M. Neither father is a party to this appeal. Mother has a lengthy history of substance abuse, including methamphetamine.

Mother appeals the juvenile court's March 16, 2015, orders (1) denying her petition for further reunification services (Welf. & Inst. Code, § 388),<sup>1</sup> and (2) selecting adoption as the permanent plan for B.M. and R.M. (§ 366.26). I.S. had severe behavioral problems and was continued in a group home; thus, parental rights to I.S. have not been terminated.

Mother claims (1) her section 388 petition for further services was erroneously denied as to I.S., because his interests would best be served by ultimately reunifying with her, given his behavioral problems and group home placement, and (2) the court erroneously declined to apply the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)) in selecting adoption over long-term guardianship as the permanent plan for B.M. and R.M. We find no error or abuse of discretion and affirm the challenged orders.

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

## II. FACTS AND PROCEDURAL HISTORY

### A. *Background*

This is the second juvenile court dependency for the three children. In March 2009, the children were living with Mother and Mr. M., the father of B.M. and R.M., when it was reported to plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), that I.S. was being physically abused and neglected. Mother and Mr. M. admitted using methamphetamine and the children were maintained with them pursuant to a family maintenance plan. The dependency was terminated in May 2010, after the parents completed a court-ordered case plan, including drug treatment, counseling, and parenting services. Mother was granted sole legal and physical custody of I.S.

Less than two years later, on March 1, 2012, I.S. was taken into protective custody after it was reported to DPSS that Mother had dropped I.S. off in an alley near his maternal grandmother's trailer in Moreno Valley with no provision for his support, and the whereabouts of B.M. and R.M. were unknown. I.S., then age eight, had missed 72 days of the school year and had come to school dirty and unbathed. The maternal grandmother, with whom I.S. had been living, was unemployed, received food stamps, had no means of transporting I.S. to school, and her trailer had no food, water, or utilities. The trailer was in the backyard of a Moreno Valley home occupied by the children's maternal great-grandparents. The maternal grandmother and great-grandparents were uncooperative with DPSS. I.S. said Mother was "somewhere in Moreno Valley in a hotel

by an AM/PM,” B.M was with Mother, and R.M. was in Mexico with his paternal grandparents.

Mother appeared at the March 6, 2012, detention hearing for I.S., but refused to cooperate with the court and DPSS in locating B.M. and R.M., telling the social worker, ““You will never get my kids. [Their father, Mr. M.,] has taken [them] to Mexico and he will never let you have [them].”” On May 24, B.M. was found in the maternal grandmother’s trailer. She had lice, ticks, and ring worm, and said she had been living in the trailer with the maternal grandmother and two other maternal relatives. On July 20, R.M. was taken from his paternal grandfather in Mexico, with the assistance of a Mexican delegate, and was returned to California.

Mother and Mr. M. were both homeless, unemployed, and had no source of income. They sometimes lived in the maternal grandmother’s trailer or in the maternal great-grandparents’ house. Mother and the children’s fathers each had lengthy substance abuse histories and multiple drug-related criminal convictions. The court sustained jurisdictional allegations regarding each parent, including, regarding Mother, that the children were at substantial risk of harm because Mother led a transient lifestyle, had an unresolved methamphetamine problem, multiple drug-related arrests, and an outstanding drug-related arrest warrant, failed to benefit from previous DPSS services, and continued to neglect the children. (§ 300, subd. (b).)

Despite their failure to benefit from previous services, DPSS recommended, and the court offered, reunification services to Mother and Mr. M. Mr. M. did not participate

in services and was incarcerated during most of the dependency proceedings. Mother and Mr. S. were also offered services for I.S., but Mr. S. was incarcerated throughout the proceedings, and in March 2013 he was sentenced to seven years four months in prison. Mr. S. maintained contact with I.S., sending him letters and drawings.

On April 2, 2012, Mother enrolled in an outpatient treatment program. In September 2012, she was allowed unsupervised visits with the children, but the visits were changed to supervised in October 2012 after Mother allowed Mr. M. to participate in one of her unsupervised visits without DPSS approval. By November 2012, Mother had completed most of her case plan, including substance abuse treatment, counseling, and parenting classes. She consistently tested negative for drugs, consistently visited the children, and the children were bonded to her. She was still unemployed, and lived with her mother, the maternal grandmother, and her other maternal relatives.

In December 2012, Mother was granted an additional six months of services, and the court authorized DPSS to place the children with Mother pursuant to a family maintenance plan when “Wraparound” services were available. I.S. received several months of “intensive” Wraparound services to address his severe behavioral problems, but the children were never returned to Mother’s care. In February 2013, the children resumed unsupervised visits with Mother, but the Wraparound facilitator expressed concern that Mother would be overwhelmed if the children were returned to her care. It also appeared that Mother was not living with the maternal great-grandparents, where she said she was living, because she was never in the home when the facilitator went to the

home without an appointment. In April 2013, Mother's unsupervised visits were again changed to supervised after Mother had a hair follicle test that was positive for amphetamine. Mother vehemently denied any drug use. In May 2013, Mother enrolled in an aftercare program for relapse prevention, and a subsequent urine test was negative for all drugs.

In June 2013, DPSS recommended that the court terminate Mother's services on the ground she had not benefited from them. During one of Mother's unsupervised visits with I.S., Mother associated with people who engaged in a violent altercation in the presence of I.S., then Mother took I.S. to his maternal aunt and uncle's home where he saw the maternal uncle being arrested by the police. Mother also threw a toy at I.S., hitting him in the head, after I.S. swore at Mother. I.S.'s foster mother reported that I.S. was defiant and swearing. DPSS believed Mother continued to have a close relationship with Mr. M., who had not participated in any services. Mother was "very much influenced by [Mr. M.]," and it appeared that Mother had allowed Mr. M. to be present during Mother's other unsupervised visits with the children, despite her agreement not to do so and without DPSS authorization.

*B. Mother's Section 388 Petition and the Section 366.26 Hearing*

Mother's services were terminated at the 12-month review hearing in June 2013, and a section 366.26 hearing was set for the children. The hearing was continued several times to allow DPSS to locate an adoptive home for the children, and was ultimately held on March 16, 2015.

Meanwhile, in August 2013, I.S. was removed from his eighth foster care placement since March 2012 and was placed in a group home. Despite intensive “Wraparound” services, his behavioral problems had worsened. He was “extremely” impulsive and hyperactive, engaged in compulsive lying, was disrespectful and physically aggressive toward adults and children, and imitated and glorified gang culture. He was also academically delayed and had difficulty reading. He showed a caring attitude toward his younger siblings and encouraged them to behave well, however.

B.M. and R.M. were also in multiple foster care placements due to their behavioral problems. B.M. was in nine different placements and R.M. was in six. B.M. and R.M. did not get along well, often fought with each other, were hyperactive, aggressive, and impulsive, and threw tantrums in order to get attention. B.M. also showed signs of separation anxiety from Mother; when she was upset, she would sometimes say she wanted her “mommy.”

In October 2014, B.M. and R.M. were placed with a paternal aunt and uncle in Nevada. By February 2015, they were thriving in the home and the paternal aunt and uncle wanted to adopt them. DPSS thus recommended adoption as the permanent plan for B.M. and R.M. DPSS tried to place I.S. with the paternal aunt and uncle, but during a five-day visit in November 2014, I.S. was verbally assaultive and aggressive toward the entire family. I.S. said he liked the paternal aunt and uncle but wanted to remain in his group home at that time. DPSS recommended that the court vacate the section 366.26

hearing for I.S., and continue him in the group home with the goal of a less restrictive placement. (See §§ 366, subd. (a)(2), 366.26, subd. (c)(4).)

On March 16, 2015, the date of the section 366.26 hearing, Mother filed a section 388 petition seeking further reunification services for all three children. In her petition, Mother noted that I.S. was in a group home, had no one willing to provide permanent care for him, and B.M. was showing signs of separation anxiety from Mother.

By September 2014, Mother was employed and had recently graduated from the Riverside Center for Change substance abuse program. She tested negative for controlled substances on 44 occasions between August 8, 2013, and July 30, 2014. She completed Family Preservation Court in April 2014 and she consistently visited the children throughout the proceedings. Mother submitted a lease agreement showing she was living in the maternal great-grandparents' Moreno Valley home, and had "full house privileges" in exchange for paying \$350 in monthly rent. She was regularly attending Narcotics Anonymous meetings, and her sponsor wrote a letter saying that Mother had grown both mentally and spiritually over the previous year.

The court considered Mother's section 388 petition before proceeding to the section 366.26 hearing for the children. The court denied the petition, noting that the children had been in foster care for a very long time and it was not in their best interests to be "disrupted yet again" by granting Mother additional services. Proceeding to the section 366.26 hearing, the court rejected Mother's claim that the parental benefit

exception applied and selected adoption as the permanent plan for B.M. and R.M. I.S. was continued in his group home placement.

### III. DISCUSSION

#### *A. The Court Properly Declined to Apply the Parental Benefit Exception in Selecting Adoption as the Permanent Plan for B.M. and R.M.*

Mother claims the court erroneously refused to apply the parental benefit exception to the adoption preference in selecting adoption as the permanent plan for B.M. and R.M. (§ 366.26, subd. (c)(1)(B)(i).) We find no error or abuse of discretion in the court's selection and implementation order.

##### 1. Applicable Law

At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Permanent plans include adoption, guardianship, and long-term foster care. (*In re S.B.* (2008) 164 Cal.App.4th 289, 296.) “Adoption, where possible, is the permanent plan preferred by the Legislature.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Adoption requires terminating the parental rights of the child's parents. (*Id.* at p. 574.)

To avoid termination of parental rights and adoption, a parent has the burden of showing that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) These exceptions permit the court “to choose an option other than the norm, which remains adoption.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.)

The parental benefit exception applies when two conditions are shown: the parent has “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 relationship must be a *parental* one, not merely a pleasant relationship with a shared, emotional bond. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) To prove the child would benefit from continuing the parental relationship, the parent must show “either that (1) continuation of the parent-child relationship will 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 [citation] or (2) termination of the parental relationship would be detrimental to the child.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

“The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs. [Citation.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349-1350.) “If severing the existing parental 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 B.D.* (2008) 159 Cal.App.4th 1218, 1235.)

Courts have variously applied either the substantial evidence or the abuse of discretion test in considering challenges to juvenile court determinations that the parental

benefit exception did not apply. (*In re Scott B.*, *supra*, 188 Cal.App.4th at p. 469.) As one court explained: “[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that . . . no judge could reasonably have made the order that he did.’ . . .” [Citations.]” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

More recently, courts have applied a composite standard of review, recognizing that the parental benefit exception entails both factual and discretionary determinations. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [substantial evidence standard applies to the factual determination of whether beneficial relationship exists, and abuse of discretion standard applies to the determination of whether there is a compelling reason to apply the exception]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [same]; *In re J.C.* (2014) 226 Cal.App.4th 503, 530-531 [also adopting the “*Bailey J.* approach”].)

## 2. Analysis

Mother argues, and DPSS does not dispute, that Mother satisfied the first prong of the parental bond test by consistently visiting the children. Mother argues: “The issue here is whether continuation of [her] parent-child relationship [with B.M. and R.M. would] promote the well-being of the children to such a degree as to outweigh the well-being the children would gain in a permanent home with adoptive parents.” Mother maintains the children would benefit more from maintaining their parental relationship with her than they would benefit from adoption, in part because B.M. was especially

attached to Mother, and was experiencing separation anxiety because she would say she wanted her “mommy” when she was upset. Mother also argues her relationships with B.M. and R.M. are “positive factor[s]” in the children’s lives.

As DPSS points out, however, Mother did not establish or introduce any evidence that B.M. or R.M. would be deprived of a substantial, positive emotional attachment such that they would be “*greatly* harmed” by the termination of Mother’s parental rights. (*In re Angel. B.*, *supra*, 97 Cal.App.4th at p. 466.) Indeed, B.M. and R.M. were “thriving” in their adoptive home with the paternal aunt and uncle, and there was no evidence that they would be greatly harmed by the termination of Mother’s parental rights. Mother exaggerates B.M.’s separation anxieties, which only surfaced when B.M. was upset and, as such, were likely to diminish over time. And, though B.M. and R.M. had behavioral problems in foster care, their behavior improved over time.

As minors’ counsel observed at the section 366.26 hearing, there was no “evidence to show the bond or the children acting out is because of the bond they have with their mother or father . . . . [¶] These children finally have a stable home in which they . . . actually have parents that are taking care of them. They’ve been in many foster placements, and it’s really because of the parents’ behaviors, that is why they haven’t had stability . . . .” The juvenile court noted: “[T]he kids are settling quite well where they are. . . . I’m not finding that . . . the parental bond outweighs the benefit of them finally achieving permanency through adoption.”

Given the children's great need for the stability that adoption would provide for them, the court did not abuse its discretion in refusing to apply the parental benefit exception for R.M. and B.M. (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 532-534.)

*B. Mother's Section 388 Petition for Further Services Was Properly Denied as to I.S.*

Mother argues her section 388 petition for reunification services was erroneously denied as to I.S., because it was in his best interests to leave his group home and reunify with her. We conclude the petition was properly denied.

Section 388 allows the juvenile court to change, modify, or set aside a previous order of the court if the petitioner establishes by a preponderance of the evidence that (1) there are new or changed circumstances since the order was made, and (2) the proposed change of order would promote the best interest of the child. (*In re S.J.* (2008) 167 Cal.App.4th 953, 959 [Fourth Dist., Div. Two].) The petition is addressed to the sound discretion of the juvenile court, and the court's decision will not be overturned on appeal absent a clear abuse of discretion. (*Id.* at pp. 959-960; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

In denying Mother's section 388 petition, the court reasonably concluded that granting Mother services and another opportunity to reunify with I.S. would not be in the best interest of I.S. In March 2015, I.S. was a 12-year-old child with severe behavioral problems. Mother showed poor judgment in exposing I.S. to violence, and violent people, during her unsupervised visits with I.S. in early 2013. Mother made no showing

that she had attained the parenting skills and judgment necessary to deal with and reverse I.S.'s severe behavioral problems. The court was reasonably concerned that Mother still lived in the same home, with the same maternal relatives, from whom I.S. was taken into protective custody in March 2012. In sum, the court reasonably concluded that I.S.'s interests would be best served by remaining in his group home where he would receive intensive therapy and treatment.

#### IV. DISPOSITION

The March 16, 2015, orders denying Mother's section 388 petition and selecting adoption as the permanent plans for B.M. and R.M. are affirmed.

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KING  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.