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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

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

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent;

v.

M.F.,

Defendant and Appellant.

E064669

(Super.Ct.No. RIJ1200409)

OPINION

APPEAL from the Superior Court of Riverside County. Tamara L. Wagner,  
Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman and  
Julie A. Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Mother, Michelle F., tested positive for alcohol and marijuana when she gave birth to E.L. Mother was given family maintenance services and retained custody of E.L. but relapsed, resulting in removal of custody when E.L. was ten months old. She was given reunification services, and eventually regained custody a second time, only to suffer another relapse. Services were terminated and the matter was set for a hearing to select and implement a permanent plan. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> At that hearing, parental rights were terminated and mother appealed.

On appeal, mother argues that the court erred in terminating parental rights where there was a beneficial parent-child relationship (§ 366.26, subd. (c)(1)(B)(i)), and that the court should have established a permanent plan of guardianship instead of adoption. We affirm.

### **BACKGROUND**

In April 2012, the Riverside County Department of Public Social Services (DPSS) responded to a referral of neglect after Michelle F., mother, gave birth to the minor, E.L. At the time of the birth, mother tested positive for marijuana and had a blood alcohol level of 0.108. Mother admitted she had used methamphetamines earlier in her pregnancy, and admitted using marijuana a few days before giving birth, but denied using alcohol other than taking cough medicine.

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

While in the hospital, mother fell asleep in the hospital bed with the child, who was practically hanging off the bed. Mother's boyfriend was also asleep in the bed and was so difficult to arouse that nursing staff suspected he was under the influence of drugs.<sup>2</sup> When interviewed, mother acknowledged a mental health history (she indicated she had been temporarily committed pursuant to § 5150 in 2011 based on a diagnosis of bipolar disorder), and that she had been mutilating herself by self-cutting since she was 15 or 16 years of age. Out of concern over her mental health and substance abuse issue, a hospital hold was placed on the child.

On April 16, 2012, DPSS filed a dependency petition alleging mother was unable to supervise or protect the child, as well as her inability to provide regular care due to mental illness or substance abuse, and the biological father's failure to provide necessities. (§ 300, subs. (b), (g).) At the detention hearing, the minor was detained. Subsequently, on May 8, 2012, the juvenile court sustained the petition, finding that E.L. was a person described by section 300, subdivisions (b) and (g). Because mother had taken the step of entering residential substance abuse treatment at Inland Valley New House, and had a strong familial support system, the minor was placed with mother under a plan for family maintenance services. Custody was removed from the alleged father and reunification services as to him were denied.<sup>3</sup>

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<sup>2</sup> Joshua L., mother's boyfriend, was not the father of the baby; mother indicated that Albert Z. was the biological father. Neither man is a party to this appeal.

<sup>3</sup> The alleged father Albert Z. was never located and never appeared. He is not a party to this appeal.

By the time of the first family maintenance status review hearing (§ 364), mother was in compliance with her plan, and had even completed several components of it, including residential drug treatment, outpatient drug treatment, and parenting education. Because mother had not completed the domestic violence program and needed to complete other services, DPSS recommended continuation of family maintenance services. At the hearing, held on November 6, 2012, the court followed the recommendation.

By February 2013, things unraveled. On January 28, 2013, the social worker learned mother's boyfriend had been released from prison and she had relapsed into use of controlled substances. Mother left the minor in the care of relatives, stating she was enrolling in an in-patient drug program. She admitted she had used methamphetamines and had smoked marijuana. Although she agreed to take a drug test at the social worker's request, she did not show up.

On February 13, 2013, mother informed the social worker that she was unable to care for her child and wanted her sister A.R. to be temporary guardian of him. The minor was detained and placed with the maternal aunt, A.R. A supplemental petition was filed pursuant to section 387, alleging that mother had failed to benefit from family maintenance services as evidenced by her relapse into abuse of controlled substances and her failure to maintain contact with DPSS. On March 4, 2013, mother agreed to undergo a saliva test for drugs, and tested positive for methamphetamines.

On March 12, 2013, the court conducted the jurisdictional and dispositional hearing respecting the supplemental petition. The court made a true finding as to the allegation that the previous disposition had been ineffective in alleviating the causes of the dependency, and removed custody from the mother. DPSS was ordered to provide reunification services, and mother was ordered to participate.

Mother's compliance with the reunification plan in the months that followed resulted in an ex parte order granting mother unsupervised and overnight visits with the child. She had completed a 90-day in-patient drug program and used the skills she had acquired. In the six-month status review report of August 2013, the social worker found mother had made substantial progress. In addition to completing the residential drug program, she had entered into an out-patient program. Her visits with the minor went well, and the maternal aunt, who monitored visits, reported that she had been building a positive bond with the child.

At the six-month review hearing held on September 10, 2013, the court continued the dependency and the relative placement, but authorized liberalized visits for mother and child, including unsupervised day, overnight, and weekend visits, and placement with mother on family maintenance upon a suitable home evaluation by DPSS. On February 14, 2014, DPSS recommended the minor's return to mother's custody with six months of family maintenance services based on mother's compliance with the service plan and the fact that all her drug tests for the period were negative. At the 12-month review hearing

held on March 11, 2014, the court found the extent of mother's progress satisfactory, and placed the minor with his mother under a plan of family maintenance services.

Things unraveled again. In August 2014, the social worker submitted a status review report recommending continued family maintenance, but noted that on August 18, 2014, mother had left for work, leaving the child with the maternal aunt (with whom mother lived), and did not return. Mother's father informed the social worker that mother was fine, but that she was in bad company, based on photographs posted on her social media page. On September 2, 2014, mother disclosed to the social worker that she had relapsed into methamphetamine use and admitted she had left the child with her sister without proper provisions. She also admitted she had difficulty maintaining sobriety despite what she had learned and that she wanted to feel "numb" due to her interpersonal relationships. DPSS detained the minor with the aunt and filed another supplemental petition pursuant to section 387 alleging that the previous disposition had been ineffective in protecting the minor.

On October 8, 2014, the court conducted the jurisdictional and dispositional hearing on the second supplemental petition, to which mother submitted on the basis of the social worker's report. Custody of the minor was removed from mother and reunification services were terminated. The court set a hearing pursuant to section 366.26, to select and implement a permanent plan for the child.

In her section 366.26 report filed on January 26, 2015, the social worker indicated the minor had been removed from the aunt's home because it could not be certified, and

that the child was then placed with mother's grandparents, the child's great-grandparents, who had acted as guardians to mother when she was a dependent child. By this time, mother had completed three in-patient substance abuse programs, and three out-patient programs, but relapsed after each, justifying the relapses as part of addiction. The social worker noted that mother has demonstrated a pattern of relapsing just when the case is about to be dismissed, adding that she had been given too many opportunities and that parenting was not mother's priority.

In April 2015, the social worker submitted an addendum report indicating that more time was needed to complete the adoption assessment of the great-grandparents. The report also indicated that the minor had grown more attached to his mother as evidenced at visits, and became extremely upset when he had to leave the visits. The great-grandparents feared the child would continue to bond with his mother through frequent visits, that his behaviors after visits would increase, and that he would experience disappointment if mother relapsed again and visits ceased. The social worker recommended reducing visits to once per week.

By July 21, 2015, when the social worker submitted a report pursuant to section 366.3, for the post-permanency status review, the minor's visits with mother continued to go well, and his reaction to leaving the visits had improved. While the minor was excited to see mother, showed affection for her and engaged with her, he was not as emotional as he had been in previous months when it was time to leave. The report also noted the child was happy and bonded very well with his great-grandparents.

In September 2015, another addendum to the section 366.26 report was submitted. Visits by this time had decreased because visits were scheduled only when mother contacted her grandparents, and she called only once every two weeks. The visits went well and the minor was happy to see his mother, but no longer suffered anxiety when leaving. The adoption assessment submitted along with the addendum indicated there is a strong and mutually positive parent-child bond between the child and the caregivers. The minor was well-adjusted and comfortable in the home of his great-grandparents, loved his caregivers, and was very bonded to them.

On October 5, 2015, prior to the section 366.36 hearing, mother's counsel filed a request to change court order pursuant to section 388, which was denied. The court then proceeded with the section 366.26 hearing, where the court found no exceptions to the finding adoptability existed and terminated parental rights. Mother timely appealed.

## **DISCUSSION**

### *1. The Juvenile Court Properly Found There Was Not a Beneficial Parent-Child Relationship.*

Mother argues the trial court erred in terminating her parental rights where substantial evidence supported application of the beneficial-relationship exception to section 366.26. We disagree.

Section 366.26, subdivision (c)(1), provides that if the court determines, based on the [adoption] assessment and any other relevant evidence, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for

adoption, unless one of several statutory exceptions applies. Once the court determines a child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental under one of the exceptions listed in section 366.26, subdivision (c)(1)(B). (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809, citing *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) We must affirm a trial court's rejection of the exceptions if the ruling is supported by substantial evidence. (*In re Zachary G.*, *supra*, at p. 809.)

One such exception applies when the court finds a compelling reason for determining that termination would be detrimental to the child because 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).) This exception applies only when the relationship with a natural parent 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 re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A parent's "frequent and loving contact" with the child was not enough to sustain a finding that the exception would apply, when the parents "had not occupied a parental role in relation to them at any time during their lives." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) The determination of whether a beneficial parent-child relationship exists is reviewed for substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

To establish that the parents have occupied a "parental role," it is not necessary for a parent to show day-to-day contact and interaction. (*In re S.B.* (2008) 164 Cal.App.4th

289, 299; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) As the court observed in *In re S.B.*, *supra*, if that were the standard, the rule would swallow the exception. (*Ibid.*)

Instead, the court determines whether the parent has maintained a parental relationship, or an emotionally significant relationship, with the child, through consistent contact and visitation. (*In re S.B.*, *supra*, 164 Cal.App.4th at pp. 298, 300-301.)

Thus, “[t]o overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, citing *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1342.) “The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467, fn. omitted; see also, *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

In making its determination, 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.*, *supra*, 27 Cal.App.4th at p. 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.' [Citation.]" (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.)

Mother's argument focuses on the minor's bond with her and his emotional anxiety at the end of visits, as evidenced in April 2015, but which had already abated by July 2015. However, during the same period the minor was also strongly attached to his caregivers, who were able to provide safety and stability. Mother had established a pattern of relapsing in her abuse of drugs and leaving the child with relatives without making provision for him. On more than one occasion, she disappeared without telling anyone where she could be found, leaving E.L. with relatives and abandoning her child with family members while she indulged herself with controlled substances.

We agree mother maintained regular visitation and contact with the child, and that the child experienced a bond with her, the first prong in the analysis of whether a beneficial parent-child relationship exists. However, like the trial court, we cannot find that the parent-child bond outweighed his relationship with his caregivers, and the well-being the child would gain in a permanent home with them.

The trial court properly determined that the exception to the finding of adoptability based on a beneficial parent-child relationship was not established.

2. *Where a Child Is Found to Be Adoptable, and No Exceptions Are Applicable, the Court Is Not Required to Consider Guardianship.*

Mother argues that the juvenile court erred in failing to consider the benefits of legal guardianship instead of adoption. Absent any legal requirement that a court consider

guardianship in the absence of factors demonstrating that termination of parental rights would be detrimental, we disagree.

Under section 366.26, subdivision (c)(1), the court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. ““If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.”” (*In re I.R.* (2014) 226 Cal.App.4th 201, 211-212, citing *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368; see also, *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Here, the court found the minor was adoptable and that termination of parental rights would not be detrimental. The court was required to terminate parental rights under those circumstances.

Mother’s argument that the court was required to consider guardianship instead of adoption relies on *In re Brandon C. supra*, 71 Cal. App. 4th 1530, but her reliance thereon is misplaced. In *Brandon C.*, the trial court found that a beneficial parent child relationship existed such that termination of parental rights would be detrimental. Having found such circumstance, the trial court in *Brandon C.* was not required to terminate parental rights, and the reviewing court, on appeal by the County, affirmed the judgment. Here, the court did not find that terminating parental rights would be detrimental.

Absent such a finding, there is no overriding consideration requiring that guardianship be preferred over adoption merely because guardianship would avoid a permanent termination of appellant’s parental rights. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145,

1156, citing *In re Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1368-1370.) A guardianship “is ‘not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature.’ [Citation.]” (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728.) Where a court finds a minor is adoptable, it is not required to explore guardianship or other less permanent alternatives. (*Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 250; see also, *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1799.)

Absent substantial evidence supporting the existence of an exception that would make the termination of parental rights detrimental to the child, the court was required to free the child for adoption, and was not free to consider a less permanent plan for the child.

**DISPOSITION**

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

McKINSTER  
J.