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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re S.H., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

E065402

(Super.Ct.No. J257569)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant A.H. (mother) appeals from an order terminating her parental rights to her son, S.H. (child). In this appeal, mother contends the juvenile court should have found applicable the beneficial parental relationship exception to termination of parental rights, codified at Welfare and Institutions Code<sup>1</sup> section 366.26, subdivision (c)(1)(B)(i). We affirm.

## I. FACTS AND PROCEDURAL BACKGROUND

On November 20, 2014, mother brought the child (born January 2010) to a CFS office and reported that she could no longer care for him. Mother reported to a social worker that she “feels she is going crazy, she hears voices and the child . . . is driving her crazy.” Mother reported that she had been involuntarily committed pursuant to section 5150 several times, most recently in July 2013, that she had not taken her medication or seen a doctor for three months, and that she used marijuana and methamphetamine. The child’s maternal grandmother, who had already adopted an older half sibling of the child, had advised mother that if she started hearing voices or thinking she might harm the child, she should take the child to the nearest CFS office. Mother stated to the social worker that “she never wants the child back in her care and he is better off without her,” expressed the opinion that the child “does not like her,” and signed a declaration giving custody of the child to CFS. The child demonstrated a “lack of bonding” with mother, showing “no distress at the time of his removal.”

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<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

The child was detained, and initially placed in foster care. A subsequent physical examination of the child revealed multiple healed injuries on the child's back, legs, and buttocks indicative of neglect and physical abuse, including what appeared to be a "branding type" injury on the child's right buttock. Two psychological examinations of mother concluded that she likely suffered from schizoaffective disorder, bipolar type. Both psychological reports detail at length the numerous challenges mother would have in safely and effectively caring for the child, given her mental illness and substance abuse issues. One of the evaluations noted, however, that mother had recently again sought treatment for her mental illness, and that her symptoms had abated to some extent.

At a contested jurisdiction/disposition hearing on May 1, 2015, the juvenile court found true allegations of serious physical harm (§ 300, subd. (a)) based on the child's injuries; failure to protect (*id.*, subd. (b)) based on mother engaging in acts of domestic violence, her mental illness and substance abuse, and her failure to resolve the issues that had led to the termination of her parental rights with respect to the child's half sibling; and abuse of a sibling (*id.*, subd. (j)). The court ordered no reunification services for mother, but allowed mother continued weekly visitation.

In July 2015, the child was placed with his maternal grandmother, in the same home as his half sibling. In a section 366.26 report filed in January 2016, the social worker recommended that mother's parental rights be terminated, with a permanent plan of adoption, and the maternal grandmother as the prospective adoptive parent. The social worker reported that the child was doing well in the maternal grandmother's care, had developed a strong attachment to her, and viewed her as a parental figure. The social

worker observed that the maternal grandmother had known the child since birth, had maintained a strong relationship with him since then, and that she loved him and had demonstrated a willingness and ability to care for him.

After the child's removal from mother's care, her visitation was initially sporadic and sometimes problematic, with mother failing to show up for some scheduled visits, and acting inappropriately when she did attend. By January 2016, however, the maternal grandmother reported to the social worker that mother was visiting regularly, and that the visits were going well.

A section 366.26 hearing was held on February 16, 2016. Mother testified, opposing the termination of her parental rights. She testified that she visited the child as often as she could, about twice a week. She testified that the child was always "extremely happy" to see her, and "really, really sad" and "frustrated" at the end of visits, because he wants to go home with her.

The court found that mother had maintained regular visitation, and that the child had "a relationship with his mother," but nevertheless, "termination of parental rights would not deprive the child of a substantial, positive, emotional attachment such that he would be greatly harmed." The court found the CFS reports to be more credible, to the extent mother's testimony conflicted with those reports. On that basis, the court found that the beneficial parental relationship exception did not apply, and ordered mother's parental rights terminated.

## II. DISCUSSION

The only issue in this appeal is whether the juvenile court erred by terminating mother's parental rights because the beneficial parental relationship exception applies, so the juvenile court should not have terminated her parental rights. We find no error.

At a section 366.26 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.) Adoption is the preferred permanent plan because it is more secure and permanent than legal guardianship or long-term foster care. (*Ibid.*) "Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child'" under one or more of the exceptions set forth in section 366.26, subdivision (c)(1)(B) (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 (*Bailey J.*)) One such exception is the beneficial parental relationship exception. (§ 366.26, subd. (c)(1)(B)(i).)

To establish the beneficial parental relationship exception to termination of parental rights, a parent has the burden of showing "both regular visitation and contact [with the child] and the benefit to the child in maintaining the parent-child relationship." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81; see § 366.26, subd. (c)(1)(B)(i).) With respect to the "benefit to the child" prong of the exception, a beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534.) The parent has the burden of

demonstrating 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 Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*))

We apply the substantial evidence standard of review to the trial court’s factual determinations, including the issue of regular visitation and contact with the child, and the existence of a beneficial parental relationship. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) The determination of whether the existence of a beneficial parental relationship constitutes a “compelling reason for determining that termination would be detrimental to the child” within the meaning of section 366.26, subdivision (c)(1)(B) is a “‘quintessentially discretionary’ decision,” which we review under the deferential abuse of discretion standard. (*Bailey J., supra*, at pp. 1314-1315.) When the party with the burden of proof appeals, contending the trier of fact erred in concluding that party failed to meet his or her burden, the question on appeal “becomes whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Accordingly, “a challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’” (*Bailey J., supra*, at p. 1314.)

The record here does not compel a finding in favor of mother. The court found mother had maintained regular visitation with the child, and that there was some “relationship” between her and the child. But the evidence does not compel the conclusion that it was a parental relationship, or that the benefits of that relationship so promoted the well-being of the child as to outweigh the benefits of adoption. When

mother first surrendered the child to CFS, the child demonstrated a “lack of bonding” to mother; viewed in the light most favorable to the judgment, it would be reasonable to conclude that mother’s mental illness and substance abuse issues had prevented her from forming a parental bond with the child, even when he was in her care. Nothing in the record regarding their subsequent visitation compels the conclusion that such a bond formed later. Although the child knew mother and enjoyed spending time with her, she at least arguably had no parental relationship with him, as opposed to that of a friendly visitor. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 468 [for exception to apply, “the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative”].) And nothing in the record compels the conclusion the child would be “greatly harmed” by severing any bond that did form. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

In support of the contrary conclusion, mother points to her own testimony about her visits with her son; that he was always happy to see her, that he was frustrated and threw tantrums when visits had to end, and that he expressed the desire to live with her. Although this is arguably some evidence of a parental relationship between mother and child, it does not compel the conclusion that a parental relationship existed, or that the child would be greatly harmed by having the relationship severed. In this sense, the evidence before the juvenile court in this case contrasts sharply with the cases relied on by mother. In *In re Amber M.* (2002) 103 Cal.App.4th 681, for example, the “common theme running through” the evidence, including evaluations from a bonding study psychologist, therapists for the children, and the court appointed special advocate was

that there was a beneficial parental relationship that predated removal and continued through the dependency that “clearly outweighs the benefit of adoption,” with the only dissenting voice a “perfunctory evaluation” by a social worker. (*Id.* at p. 690.) Similarly, in *In re Scott B.* (2010) 188 Cal.App.4th 452, the social worker and the court appointed special advocate opined that the child had a strong parental relationship with his mother, and that given the child’s “precarious emotional state,” his continued ability to do well in the care of a foster parent depended on the maintenance of the relationship with the mother. (*Id.* at pp. 471-472.) No similar evidence appears in the present record.

In short, mother has demonstrated no error by the juvenile court.

III. DISPOSITION

The judgment terminating mother’s parental rights is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

CODRINGTON

J.