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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

E065919

(Super.Ct.Nos. J254080 &  
J254081)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant S.G. (mother) appeals the termination of her parental rights to her children, S.G. and A.G., following a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing. She contends the juvenile court erred by failing to apply the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i). We affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

In March 2014, San Bernardino County Children and Family Services (CFS) received a referral alleging general neglect of A.G. (born 2007) and S.G. (born 2009) and their older half sibling, A.M. (born 1996). L.G., the presumed father of A.G. and S.G. (father)<sup>2</sup> had returned to the household after his March 11, 2014, arrest for battery on mother. There were previous CFS contacts with the family regarding domestic violence and father's mental health issues. On April 2, 2014, CFS filed a section 300 petition alleging failure to protect based on the parents' domestic violence behaviors, and failure to provide for support based on father's involuntary psychiatric hold and inability to arrange for care of the children.<sup>3</sup> The juvenile court found a prima facie case for detaining the children and granted supervised visitation to the parents.

In the jurisdiction/disposition report filed on April 22, 2014, CFS noted the parents' domestic violence history and that mother had obtained a temporary restraining

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

<sup>2</sup> The parents married in 2004. Father is not a party to this appeal.

<sup>3</sup> A similar petition was filed on behalf of A.M., who remained placed with mother; however, jurisdiction over him was terminated in October 2014 after he turned 18.

order against father in October 2013. CFS recommended family reunification services. On April 24, 2014, mother submitted a waiver of rights. The children were placed in the custody of the maternal grandparents. At father's request, a contested jurisdiction/disposition hearing was held on April 30, 2014. The juvenile court sustained the petition, ordered reunification services, and approved the case plans. The parents' proposed case plans included general counseling, domestic violence and parenting education, and psychiatric and substance abuse treatment for father.

On June 26, 2014, CFS detained the children with foster mother R.W. because the grandparents refused to facilitate visitation with father due to their fear of him. On July 22, 2014, the court sustained a section 387 petition addressing the children's higher level of care, from relatives to foster care. In September 2014 the court approved unsupervised visitation with mother.

The six-month review report filed on October 15, 2014, noted that father had relapsed or was not taking his medications for bipolar disorder, and mother completed a domestic violence program, but violated a restraining order by having contact with father. Mother's counselor observed that mother had reverted to the same negative choices; mother did not see how her behavior impacted family reunification. Mother was dishonest about contacting father, who was living on the streets and had tested positive for marijuana and amphetamines. While mother regularly participated in visitation, CFS recommended supervised visitation because she repeatedly separated the children from their foster mother during visits and violated the restraining order. Although the court

found parents' progress in services to be minimal, it continued reunification services, ordered supervised visitation, and set a 12-month review hearing.

In February 2015, mother was doing well in her services and CFS was authorized to provide her with unsupervised overnight and weekend visits. In the 12-month review report filed on April 1, 2015, CFS recommended that the children be returned to the care of mother under family maintenance services, but that reunification services to father be terminated. Father objected to CFS's recommendations, and a contested 12-month review hearing was set for April 24, 2015. At the contested hearing, the court ordered the children placed with mother and advised her to permit the children's attorney or social worker access to the children. It terminated father's services and ordered his supervised visitation to be arranged by CFS.

In May 2015, the children's lawyers informed CFS that they were having difficulty contacting mother to check on the children. CFS also learned that the parents had reunited. On May 27, 2015, CFS detained the children with foster mother C.K. and filed a section 387 petition alleging that due to mother's violation of a temporary restraining order and the court's visitation order for father, the children needed to be placed in a higher level of care. On June 1, 2015, the court found a prima facie case for detaining the children in foster care, ordered supervised visitation, and set a jurisdiction/disposition hearing. At the June 25, 2015, jurisdiction/disposition hearing, the court sustained the section 387 petition, removed the children from mother, placed them in foster care, approved supervised visitation, and ordered family reunification services for mother, with the addition of substance abuse services.

In the 18-month review report filed on October 8, 2015, CFS recommended termination of mother's services and the setting of a section 366.26 hearing. In September 2015, the children were placed with Ms. D., a "step-aunt." Mother continued to have frequent contact with father, who admitted that he was residing with mother during the family maintenance period. Mother was dishonest about her involvement with father despite CFS confirming their frequent contact. Mother was receiving treatment and counseling for substance abuse, and she attended family counseling in August and September 2015. The counselor observed that mother and the children had "a strong attachment between them"; however, mother lacked insight about the impact of domestic violence and substance abuse on herself and the children. Despite her faults, mother regularly attended supervised visits. On November 2, 2015, the court continued the children in relative placement, terminated mother's services, and set a section 366.26 hearing. Mother's appeal of the setting of the section 366.26 hearing was dismissed, and the remittitur was issued on February 3, 2016.

According to the section 366.26 report filed on February 25, 2016, CFS recommended termination of parental rights and adoption by Ms. D. An adoption by relatives would allow the children to remain in touch with parents and family members. Mother visited consistently, but she pushed boundaries and rules. Father was homeless and often missed visits or was inappropriate during the visits. For example, Ms. D. agreed to bring the children to a restaurant to visit, but father arrived and asked her to wait while he panhandled. When Ms. D. objected, father yelled and cursed in front of the children. The children recalled being made to panhandle while in father's care. The

children were happy and healthy and doing well in school. S.G. was described as being expressive with a great personality and A.G. readily offered to comfort others, and was outgoing and talkative. Ms. D. had known the children for at least five years and was very close to them; they called her “Auntie.” She had an open and loving relationship with them and wanted to adopt them to keep them with family. She stated that she would allow the children to decide if they wanted a relationship with their biological parents.

The contested section 366.26 hearing was held on March 24, 2016. Mother testified that she visited weekly with the children, who were bonded to her. She described them as being happy to see her, as evidenced by their hugging and smiling. She disagreed with termination of her parental rights because it was not in the children’s best interests. She explained that they had struggled together and the children knew she was there and loved them. She preferred legal guardianship over adoption. Mother argued that the beneficial parental relationship exception to adoption applied. CFS argued that the parental bond was not so strong as to outweigh the benefits the children would receive through the permanency of adoption. The children’s counsel agreed with CFS.

Following arguments, the juvenile court found the children adoptable and concluded that the parental relationship exception did not apply. The court recognized that mother regularly participated in friendly visits with the children; however, it found that she did not occupy a parental role in their lives. The court found that mother failed to show that her parental relationship promoted the well-being of the children to such a degree as to outweigh the well-being that they would gain in a permanent home with new

adoptive parents. Thus, the court terminated parental rights and ordered adoption as the children's permanent plan.

## II. DISCUSSION

Mother contends that she established the existence of a parental relationship with her children through regular visitation with them such that they were bonded to her and would be greatly harmed by the termination of her parental rights. We disagree.

At a section 366.26 hearing, “[a]doption 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 due to one or more of the following circumstances: [¶] (i) 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).)” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*)) 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.)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) The parent must show that a beneficial parental relationship exists and that severing that relationship would result in great harm to the child. (*Id.* 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" (*ibid.*; see *In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*)) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*Bailey J., supra*, at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

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 (*S.B.*); *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) As the court observed in *S.B.*, "[i]f that were the standard, the rule would swallow the exception. [Citation.]" (*S.B., supra*, at p. 299.) 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. (*Id.* at pp. 298, 300-301.) "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.' [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or

developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship. [Citation.]” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316.)

We agree that mother maintained regular visitation and contact with the children, and that the children experienced a bond with her, the first prong in the analysis of whether a beneficial parent child relationship exists. However, mother cannot establish that the children ““would be greatly harmed”” by terminating her parental rights. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1235.) There is nothing in the record to suggest that either child would suffer great harm as a result of proceeding with adoption and terminating parental rights. Indeed, there is ample support for the contrary conclusion.

The parents’ household violence and risks were extreme, necessitating the intervention of law enforcement. For example, in March 2014, father hit mother with a hammer. In 2013, he was placed on a psychiatric hold after he walked around the family home, in a psychotic state, carrying a machete. While mother “normalized” father’s behaviors, he accused her of being controlling, claiming that she would lie, block him from leaving home and try to hit him. In April 2015, after receiving approximately a year of services, mother gained custody of the children; however, on May 27, 2015, CFS was forced to detain them a second time because mother violated the restraining order (prohibiting father’s contact with her) and the court’s order (prohibiting father’s contact with the children through her). Regardless of what the children endured as a result of their parents’ caustic relationship, mother showed no intent of separating from father.

Rather, she chose to focus on her needs by lying about seeing father and coaching the children to promote the same lie. According to father, mother bought him a truck to keep him quiet about their ongoing relationship. He also admitted that they were together during the underlying proceedings. The social worker had “no confidence in Mother’s ability to protect her children from Father’s aggressive and dangerous lifestyle.” In short, mother prioritized her relationship with father over the welfare of her children who suffered and were placed at great risk in father’s care.

Once mother’s reunification services were terminated in November 2015, the focus of the proceedings shifted to the children’s need for permanence and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309 (*Marilyn H.*.) However, mother discounted the children’s needs when she argued for the preservation of her parental rights because “we have all been through this struggle together . . . [and] I have never left their side.” The children need a parent who will make them a priority, and provide a home environment free from the negative effects of substance abuse, as well as domestic violence. (See § 300.2 [the purpose of dependency law].) As one relative expressed, mother ““doesn’t put her kids first.”” That relative quoted mother as stating she (mother) would ““always smoke weed and she wasn’t going to stop.””

In contrast, the children’s needs came first in their prospective adoptive home. By the time of the section 366.26 hearing, the children had been in their prospective adoptive home for six months, after having been moved approximately five times during the prior two years. The adoptive mother, Ms. D., had known them since 2011, wanted to adopt them to keep them with family, and had indicated that she would allow S.G. and A.G. to

decide if they wanted a relationship with their biological parents. Mother trusts that Ms. D. will permit the children to have contact with her and other family, and the law presumes a fit caregiver such as Ms. D. will permit contact with others that serves the children's best interests. (*Punsly v. Ho* (2001) 87 Cal.App.4th 1099, 1109-1110, disapproved on other grounds in *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1226, fn. 4.) Moreover, the willingness of an adoptive parent to permit safe and beneficial contact with the child's family, for the adopted child's interests, is an appropriate factor to consider when assessing the benefits a child will gain through adoption. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.)

The section 366.26 report described the children as happy and healthy children, who were doing well in school and were both well behaved. Ms. D. has excellent family support and a respect for humanity in general. She is a stay-at-home mother who is a "comfy assist" for one of her sons, who is on Supplemental Security Income, and she "does hair" as a side job. Ms. D. does not drink or smoke, and does not permit smoking in her home. She enjoys taking the children to museums, amusement parks, movies, and on road trips. She is family oriented and a loving mother. Her home is warm and welcoming, in a "kid friendly" neighborhood. Ms. D is committed to providing the children with stability and continued to meet their physical, emotional, social, and medical needs. The children's permanence and stability were the required focuses of the court, which is best achieved through adoption by Ms. D. (*Marilyn H., supra*, 5 Cal.4th at p. 309.) Furthermore, there is no evidence that the children would suffer any detriment as a result of terminating parental rights. Consequently, the juvenile court could

reasonably conclude that termination of Mother's parental rights would have no detrimental impact on the children.

Notwithstanding the above, mother contends the children felt secure knowing she loved them and she would always be there to protect them in the best way she could. Relying on *In re Amber M.* (2002) 103 Cal.App.4th 681, 690 (*Amber M.*) and *In re Scott B.* (2010) 188 Cal.App.4th 452, 473 (*Scott B.*), mother argues that the juvenile court erred in failing to consider the benefits of legal guardianship instead of adoption. Guardianship, while a more stable placement than foster care, is not irrevocable; thus it falls short of the secure and permanent future the Legislature had in mind for a dependent child. (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) Moreover, mother's reliance on *Amber M.* and *Scott B.* is unavailing.

In *Scott B.*, *supra*, 188 Cal.App.4th 452, the child's court-appointed special advocate stated repeatedly in her reports that Scott and his mother had a very close relationship, and it would be detrimental to Scott for the relationship to be disrupted. Scott had insisted repeatedly that he would prefer to live with his mother, was strongly bonded to her, and believed that adoption meant his mother would be included in his adoptive family. (*Id.* at p. 471.) He was emotionally unstable and had threatened to run away if he was adopted because he wanted to live with his mother. (*Id.* at pp. 466, 471.) His "regressive" behavior had stabilized with "wraparound services and the support of Mother." (*Id.* at pp. 465, 472.) On those facts, the Court of Appeal concluded the juvenile court should have applied the beneficial relationship exception to termination of parental rights. (*Id.* at p. 472.) The circumstances of the present case are vastly different.

For similar reasons, *Amber M.*, *supra*, 103 Cal.App.4th 681, is also distinguishable. In that case, a psychologist who conducted a bonding study of the mother and the oldest child, who was seven years old, concluded that they had a primary attachment and a primary maternal relationship, which it would be detrimental to the child to sever. (*Id.* at p. 689.) The oldest child’s therapist believed it was important to continue her relationship with the mother. (*Ibid.*) There was also evidence of a strong attachment to the mother on the part of the two younger children. (*Id.* at pp. 689-690.) The presence of this “common theme running through the evidence” that there was “a beneficial parental relationship that clearly outweigh[ed] the benefit of adoption” prompted the appellate court to rule that the beneficial relationship exception applied, and to reverse the juvenile court’s order terminating mother’s parental rights. (*Id.* at p. 690.) No comparable evidence was introduced in the present case.

Here, there is some evidence to show that the children enjoyed their visits and contacts with mother and shared a bond with her. “But this is simply not enough to outweigh the sense of security and belonging an adoptive home would provide.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.) In *Helen W.*, the appellate court held that the beneficial parental relationship exception did not apply, although the children referred to the mother as “Mom,” the mother and the children loved each other, and the mother provided for the children’s needs during visits. (*Id.* at p. 81; accord, *In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425.) In this case, the benefit the children will receive from a stable home with a caregiver, with whom they already have a positive relationship

and who meets their needs, outweighs the benefit the children might receive from maintaining a relationship with mother.

For the foregoing reasons, we conclude the juvenile court did not abuse its discretion in finding that the beneficial parental relationship exception to adoption under section 366.26, subdivision (c)(1)(B)(i), did not apply.

### III. DISPOSITION

The order terminating parental rights and placing A.G. and S.G. for adoption is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MILLER

J.

CODRINGTON

J.