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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

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

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

F064490

(Super. Ct. No. JJV064440)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Tulare County. Charlotte A. Wittig, Commissioner.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

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\* Before Wiseman, Acting P.J., Levy, J., and Franson, J.

Kathleen Bales-Lange, County Counsel, John A. Rozum, Chief Deputy County Counsel, and Amy-Marie Costa, Deputy County Counsel for Plaintiff and Respondent.

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A.G. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to her daughters A.G. and M.L.<sup>1</sup> Mother contends that the trial court erred in finding that the sibling-relationship exception did not apply (§ 366.26, subd. (c)(1)(B)(v)).

We disagree and affirm the court's order.

**FACTUAL AND PROCEDURAL HISTORIES**

This is mother's second appeal in this matter. In *In re A.G. et al.* (Apr. 25, 2012, F063472 [nonpub. opn]), we rejected her challenges to court orders made at a permanency planning hearing held on August 25, 2011. We begin with a summary of the facts from our earlier opinion.

In March 2010, the juvenile court determined that half sisters A.G., then 11 years old, and M.L., then four years old (collectively the girls), came within its jurisdiction under section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (g) (failure to support). On two occasions, mother had physically abused A.G. In the first incident, she struck A.G. in the face, causing her to bleed and injuring her nose, and told A.G. she was going to kill herself and the girls. In the second incident, she struck A.G. repeatedly, causing bruising all over A.G.'s back. Later, mother told a social worker that she wanted to kill the girls and the girls were better off dead. Mother had a history of methamphetamine abuse. She failed to provide adequate medical care for A.G., who has a complex medical history, which includes having an imperforated anus, cloacal anomaly, and renal insufficiency. A.G.'s medical conditions require her to take multiple medications and see health professionals every two months to monitor her

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

medications and conditions. Mother, however, had not taken A.G. to her medical appointments, as it had been nearly a year since her last medical visit, and denied that A.G. had health issues. The girls' fathers were incarcerated and could not support them. (*In re A.G. et al., supra*, F063472, p. 2.)

The juvenile court adjudged the girls juvenile dependents, removed them from mother's custody, and ordered reunification services for mother. Despite 12 months of reasonable services, she failed to successfully comply with the case plan and reunify with the girls. (*In re A.G. et al., supra*, F063472, p. 3.)

The Tulare County Health and Human Services Agency (Agency) prepared a report for a section 366.26 hearing scheduled for June 3, 2011. The Agency recommended the girls remain dependents and the case be continued for 180 days to allow time to determine the appropriateness of possibly separating the girls and pursuing different plans for them. The girls had been placed together since the outset of the dependency case, with the exception of three days that M.L. was placed separately with her paternal aunt; the two had been in a total of six placements together. Their most recent placement began in February 2011.

The girls told a social worker they would not mind not being placed together. M.L. stated that A.G. was mean to her and would yell and hit her. The social worker believed this was a sibling issue, rather than a parenting issue, as A.G. had been trying to discipline M.L. since they had been in the placement. A.G. told the social worker that M.L. gets on her nerves and annoys her, and that she would like to be in a different placement away from M.L. A paternal cousin who was interested in adopting M.L. was being assessed for placement. The social worker had supervised a visit between the relatives and M.L., and M.L. wanted the visits to continue. (*In re A.G. et al., supra*, F063472, p. 5.)

The report recommended that the case be continued for 180 days so an appropriate permanent plan could be developed for the girls and to assess if they should be separated

or remain as a sibling group. A team who had reviewed the case concluded the children should be separated as A.G. tended to try to parent M.L. and would yell at M.L. and hit her to discipline her. (*In re A.G. et al., supra*, F063472, p. 6.)

An adoptions assessment completed in May noted in the assessment that the girls' therapists had not yet explored with them the implication of permanently being separated from one another, nor addressed the grief and loss of not returning home to mother. The assessment worker believed more time was needed to determine the best outcome and permanent plan for the girls, as the girls were not emotionally ready for permanency, and requested the case be continued for 180 days to allow time to determine the appropriateness of separating the girls and pursuing two different plans for them. (*In re A.G. et al., supra*, F063472, pp. 6-7.)

At the June 3, 2011, hearing, the juvenile court continued the hearing after appointing separate counsel for each of the girls. The court asked the parties to address at the next hearing concerns it had regarding the Agency's recommendation that would result in separating the girls, as it was uncertain whether separation was in their best interests and whether their problems were simply adolescent issues.

On June 28, 2011, a team from the Agency discussed permanency for the girls and determined the plan should be foster care for the next six months so a proper assessment could be made of the impact of separation on each girl and whether separation would be in their best interests.

On July 12, 2011, the girls were removed from the foster home after M.L. reported that the foster mother had pushed and choked her. Following an investigation, it was determined that the allegations were unfounded. Nevertheless, the girls were moved to a new foster home as a precaution. The foster home was an emergency placement, as the Agency was having difficulty finding a home that could take both girls. M.L. was asked about her visits with her paternal relatives, and she responded she really liked visiting and wanted to live with them. When a social worker asked M.L. about A.G., since A.G.

could not go with her, M.L. responded that was okay because A.G. told her “I’m not her sister anymore because our foster mom’s baby is her sister not me.” A.G. told the social worker that everything was going well at the foster home and she wanted to stay there, as she liked the town and the family. (*In re A.G. et al., supra*, F063472, p. 7.)

M.L. told the social worker it was not nice for a sister to hit her little sister in the stomach so hard it knocked the wind out of her, which A.G. had done to her. M.L. said it really hurt. M.L. did not tell the foster parent because A.G. would hit her again. When the social worker asked A.G. about this, A.G. denied hitting M.L., but admitted she told M.L. what to do.

M.L.’s therapist reported that M.L. had been diagnosed with oppositional defiant disorder. The therapist believed M.L. would benefit from a stable environment where she could progress as developmentally appropriate. A.G.’s therapist reported that A.G. was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct, physical abuse, and neglect as a victim. (*In re A.G. et al., supra*, F063472, p. 8.)

In a report prepared for the continued hearing scheduled for July 26, 2011, the Agency recommended the case be transferred to the adoptions unit for further assessment for adoption. (*In re A.G. et al., supra*, F063472, p. 8.) On July 26, 2011, the court authorized separate placements for the girls, finding separation would be in their best interests, and ordered weekly sibling visits if they were separated. However, the court continued the permanency planning hearing again because one of the fathers had not been transported to the hearing. On July 29, 2011, M.L. was placed with her paternal cousin, while A.G. remained in the foster home the girls had moved to earlier in the month. The girls were adjusting very well to their placements and bonding with their respective care providers. (*Id.* at p. 9.)

A.G.’s therapist reported that A.G. felt responsible for M.L. and did not trust the family that was seeking to adopt M.L. as A.G. did not know them. A.G. also stated that if M.L. was to be adopted, she would be glad to not have to feel responsible for M.L. and

be constantly annoyed by her. A.G. had begun to address the prospect of her own adoption. She was ambivalent and contradictory about this path and contradicted herself many times during therapy sessions. According to the therapist, A.G. was a “very confused girl with seemingly no sense of self.” (*In re A.G. et al., supra*, F063472, p. 10.) The therapist believed it was very important for A.G. to have consistent contact with healthy individuals who make good choices so that A.G. could learn to make healthy choices herself.

In a report prepared for the continued hearing scheduled for August 25, 2011, the Agency reported that A.G.’s current care providers were willing and able to adopt A.G., and A.G. wanted to remain there and be adopted by them. M.L.’s current care providers were willing and able to adopt M.L., and M.L. wanted to remain in the home, but wanted to continue to visit A.G. and mother. The Agency recommended the girls remain dependents and that the permanent plan for the girls be adoption with their care providers.

At the permanency planning hearing on August 25, 2011, county counsel asked the court to follow the recommendation set out in its June report, asserting that the Agency believed the girls “could be adoptable.” Six-year-old M.L. was currently in a prospective adoptive home, and the Agency wanted to continue the matter for 180 days so it could further evaluate M.L.’s stability and progress in that placement, working toward adoption planning. With respect to A.G., the Agency also asked for a 180-day continuance to allow additional time for A.G. and her foster family to explore adoption possibilities as well as other permanent plans such as guardianship. County counsel further explained that the goal of the plan was adoption, and they wanted to transfer the case to the adoption unit to further explore and evaluate the adoption plan, but the Agency was not asking for termination of rights. (*In re A.G. et al., supra*, F063472, p. 11.)

M.L.'s attorney agreed with the Agency's recommendation, asserting that M.L. was adoptable, but asked that the matter be continued for 180 days because the placement was relatively new and the attorney wanted to ensure the girls' bond was assessed properly before termination of parental rights, so it could be determined whether there would be a sibling-relationship argument as an exception to termination. A.G.'s attorney also agreed with the Agency's recommendation, as well as M.L.'s attorney's argument. He agreed more time was needed for placement, as A.G. had not been in her current placement very long. (*In re A.G. et al., supra*, F063472, p. 12.)

The court followed the Agency's recommendations and found termination of parental rights would not be detrimental to the children who had a probability of adoption but were difficult to place. In addition, the court found that visits with mother would be detrimental to the best interests of the girls and accordingly ordered there be no visitation, telephone contact, or other communication. (*In re A.G. et al., supra*, F063472, p. 13.)

Mother appealed the juvenile court's orders. She argued, among other things, that the termination of parental rights would substantially interfere with the girls' sibling relationship such that termination should be precluded pursuant to section 366.26, subdivision (c)(1)(B)(v). On appeal, this court affirmed the juvenile court's orders.

While there was no dispute that the girls were bonded and shared a home and common experiences, the sibling-relationship exception required a showing of detriment, and we observed that there was no evidence that either A.G. or M.L. would suffer detriment if their relationship was severed. Further, even if the girls might suffer detriment if separated, we concluded that it was not an abuse of discretion to determine that the girls would gain more through adoption than by maintaining their sibling relationship. Finally, we recognized that, if circumstances were to change or new evidence were to emerge regarding the sibling relationship before the section 366.26 hearing, the juvenile court could revisit the issue at the hearing. (*In re A.G. et al., supra*, F063472, at pp. 16-17.)

The current appeal deals with the juvenile court proceedings since August 25, 2011.

On January 18, 2012, the Agency filed a report for the scheduled section 366.26 hearing, recommending adoption as the permanent plan for each of the girls. It noted that A.G. and M.L. were placed with A.G.'s prospective adoptive parents on July 15, 2011, and M.L. was placed with her paternal relatives (who are also her prospective adoptive parents) on July 29, 2011. Thus, the girls had been living apart with their separate prospective adoptive parents for about six months.

The Agency reported that their separation was a positive change for both girls. Prior to separation, A.G.'s relationship with M.L. had been "very parentified." M.L. would complain that A.G. was trying to discipline her, and A.G. felt she needed to take care of M.L. rather than allowing herself to be a child. A.G. had settled well into her placement and reported that she finally feels like she fits in at home and is accepted for who she is. A.G. also told a social worker that, now that she is not living with M.L., she can do more because she no longer feels constantly responsible for M.L., but she is glad that she is still able to see her at least once a week. M.L. had made great progress in her relative placement as well.

A.G. and M.L. were able to visit each other at least once a week since they were placed in separate homes. They usually met at a fast food restaurant, park, or one of the girls' homes. They both said that they enjoy spending time together.

The Agency reported that M.L.'s prospective adoptive parents have a strong commitment to her and are committed to the girls' maintaining contact and allowing them opportunities to spend time together in a safe environment so they can build a healthy relationship. A.G.'s prospective adoptive parents are also committed to her adoption and understand the importance of maintaining the relationship between A.G. and M.L.

A court-appointed special advocate (CASA) representative also prepared a report for the section 366.26 hearing, which was filed with the court on January 20, 2012. According to the CASA representative, M.L. appeared to have made the transition from living with her sister to moving into the relative-adoptive placement with good results. M.L. was bonding with her adoptive family and addressed her adoptive parents as “Mom” and “Dad.” A.G.’s foster parents reported that their relationship had grown and the family was bonded with A.G. A.G. called her foster parents “mom” and “dad,” and referred to their children as “my little brother and my baby sister.” The girls saw each other for weekly visits and both reported that they enjoyed these visits. A.G. told the CASA representative that she sees that M.L. is happy in her new home with her new family. The CASA representative also facilitated visits between the girls, and they were “very upbeat” and “end[ed] pleasantly with hugs and good-byes.”

The juvenile court held the section 366.26 hearing on March 2, 2012. The court allowed the parties to argue “as if it were the first [366.26 hearing],” explaining to mother’s attorney that she could “argue the issue of whether or not parental rights should be terminated and whether any of the exceptions do apply.”

An attorney representing the fathers told the court that they both wanted to do what was best for the children and were willing to give up parental rights.

Mother’s attorney raised the parent-child relationship exception, which she had argued previously. She also asserted that the sibling-relationship exception should apply to avoid termination of parental rights. She argued:

“[T]he latest addendum has indicated that [A.G. and M.L.] do continue to see each other, they do enjoy that time they have together, that they are happy when they see each other.... I know that both of these girls have been involved in therapy separately, separate and apart for a long period of time. [¶] It seems that perhaps that if at some point conjoint therapy between the girls had been offered, we might be able to salvage and save the placement that they had together originally. These kids were moved many, many times before they were finally separated and ended up apart

into separate homes. It would seem that this relationship that they have still could be salvaged.

“I would argue that terminating parental rights means that ... although the relatives ... have indicated a willingness to continue that contact with each other, there is no guarantee that would continue. The only way to guarantee the continuance of that relationship would be to not terminate parental rights and to maintain that biological relationship ... and the legal relationship that these children have.

“[A]s these girls continue to go, spend more time together, they are bettering their relationship. And it seems that this relationship could be salvaged if perhaps working together in some sort of therapeutic setting together.”

A.G.’s attorney asked the court to follow the Agency’s recommendation. She told the court that A.G. was happy in her current placement and looked forward to adoption. A.G.’s attorney added that A.G. was enjoying her visits with her sister, and A.G. believed their relationship was getting better with the consistent visits.

M.L.’s attorney also agreed with the Agency’s recommendation of adoption. She argued there had not been a sufficient showing that the sibling exception applied to prevent termination of parental rights. M.L.’s attorney pointed out that there had been several failed placements with the girls together. “I think the most stability for both children came once they were able to secure ... placements independent [of] one another where they were able to focus on their own issues.” She concluded, “I submit that it is in her best interest that the Court terminate parental rights as to [M.L.] understanding that while there is a sibling relationship that exists that the exception does not apply ... in fact, the relationship is better now that they have been able to redefine their roles and maintain separate placements.”

County counsel argued that each girl deserved to be adopted.

After hearing from all the parties, the court found that mother did not meet her burden of establishing that either the parent-child relationship exception or the sibling-relationship exception applied in this case. As to each of the children, the court expressly

found that “the benefits from the permanence of stability being offered by adoption far outweigh any benefit that would continue with parental or sibling contact.” The court continued, “It certainly is encouraging to hear that the girls have a better relationship now, but the Court has to consider what would happen if they couldn’t contact one another, and the Court still has considered that and finds that the benefits of adoption do outweigh those relationships.”

The court terminated parental rights, declared A.G. and M.L. free from the custody and control of their parents, and referred the girls to the county adoption agency for adoptive placement.

### **DISCUSSION**

The purpose of a section 366.26 hearing is to select and implement a permanent plan for the dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) The Legislature’s preferred permanent plan is adoption. (*Id.* at p. 53.) If a child is adoptable, “the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Ibid.*)

Here, mother contends the sibling-relationship statutory exception applies. (§ 366.26, subd. (c)(1)(B)(v).) To avoid termination of parental rights under this exception, the juvenile court must find “a compelling reason for determining that termination would be detrimental to the child” due to the circumstance that “[t]here

would be substantial 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." (*Ibid.*) It was mother's burden to prove that the sibling-relationship exception applies in this case. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

We review the court's ruling under the abuse of discretion standard. This means that we review the court's findings of fact for substantial evidence and its conclusions of law de novo, and we reverse its application of law to facts only if it is arbitrary and capricious. (*In re C.B.* (2010) 190 Cal.App.4th 102, 123.)

In mother's first appeal, we concluded there was no evidence that either A.G. or M.L. would suffer detriment if their relationship was severed. (*In re A.G. et al., supra*, F063472, p. 16.) In her current appeal, mother contends that the dynamics of the sibling relationship have improved to such a degree that the benefits to A.G. and M.L. from maintaining that relationship outweigh the benefits from adoption. She points out that both girls would like their visits to continue and asserts that "all parties agree [the relationship] should continue." The juvenile court disagreed, finding that the benefits of adoption far outweighed any benefits from continued sibling contact.

The record shows that the separation has been a positive change for both girls. A.G. and M.L. have settled well into their respective placements, and their prospective adoptive parents are committed to adopting them. A.G.'s therapist believed it was very important for A.G. to have consistent contact with healthy individuals who make good choices so that A.G. could learn to make healthy choices herself. In her current placement, A.G. has reported that she feels like she is accepted for who she is, and she

calls her adoptive parents “mom” and “dad.” A.G. told her attorney that she is happy in her placement and looks forward to adoption.

M.L.’s therapist believed M.L. would benefit from a stable environment where she could progress as developmentally appropriate. In her current placement, M.L. is bonding with her adoptive parents and calls them “Mom” and “Dad.” A.G. has observed that M.L. is happy in her new home with her new family. M.L.’s attorney argued that M.L. found stability when she was placed in a home separate from A.G., so each girl could work on her own issues.

Under these circumstances, we cannot say the juvenile court abused its discretion by finding that mother failed to establish that the sibling-relationship exception applied. No one disputes that A.G and M.L’s relationship has improved since they have been placed in separate homes, but there is no evidence that either child would suffer detriment if the relationship were to end. While mother asserts that maintaining a relationship with M.L. is critical for A.G. in attaining a better sense of self, she offers no evidence to support this assertion.

**DISPOSITION**

The juvenile court order is affirmed.