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

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

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.R.,

Defendant and Appellant.

F064603

(Super. Ct. No. JJV064155)

OPINION

THE COURT*

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

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Kathleen Bales-Lange, County Counsel, John A. Rozum, Chief Deputy County Counsel, and Jason G. Chu, Deputy County Counsel for Plaintiff and Respondent.

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S.R. (mother) appeals from an order terminating parental rights (Welf. & Inst. Code, § 366.26) to her three children.¹ Mother contends that (1) the juvenile court's finding that the children are likely to be adopted was not supported by substantial evidence, and (2) the court erred by terminating her parental rights because she established that the parent-child relationship exception applied (§ 366.26, subd. (c)(1)(B)(i)). We disagree and affirm the court's order.

FACTUAL AND PROCEDURAL HISTORIES

Mother has three children. C.M., a boy, was born in 2007, and his alleged father is C.M. Fraternal twins J.W.C., a boy, and J.C.C., a girl, were born in 2008, and their biological father is J.C.

Mother has a history with the Tulare County Health and Human Services Agency (Agency). In earlier proceedings, the children were detained after it appeared that mother had abandoned them. On August 20, 2009, mother left C.M. with a maternal aunt and left the twins with a neighbor, telling the neighbor she would return in a couple hours. Mother did not return to pick up any of her children and did not answer the neighbor's calls throughout the evening. The next day, the aunt contacted authorities, and Agency placed the children in protective custody. The children were placed together with a foster family.

The maternal aunt told social workers that mother had a drug problem and would leave the children for days without contact. She also reported that mother had anger problems and would hit the children in anger. In addition, a paternal aunt of the twins said that mother was unstable and had anger problems. Three days after the children

¹Subsequent statutory references are to the Welfare and Institutions Code.

were placed in protective custody, mother met with a social worker. Mother told the social worker she had a “meth problem,” but she had stopped using two months earlier. She also reported that she was arrested for elder abuse in either 2002 or 2003, and she had completed a 52-week anger management class to complete her probation. Mother denied that she physically abused the children.

On August 25, 2009, a juvenile dependency petition was filed on behalf of C.M. and the twins, alleging physical abuse by mother (§ 300, subd. (a)), failure to protect by both mother and J.C. (§ 300, subd. (b)), and failure to support by presumed father C.M. (§ 300, subd. (g)). At a detention hearing the next day, the juvenile court ordered the children detained.

A jurisdiction/disposition report prepared by Agency stated that mother and J.C. appeared to have a history of abandoning the young children with neighbors and relatives. At that time, C.M. was two years old and the twins were one year old. A jurisdictional hearing was held on October 1, 2009. The juvenile court found true the allegations that mother’s substance abuse and willful or negligent failure to provide adequate medical care placed the children at risk of serious physical harm or illness.² The allegations of physical abuse were dismissed, however. The court ordered family reunification services for mother, which included parenting class, anger management and substance abuse counseling, and random drug testing.

In a status review report prepared in February 2010, Agency reported that mother was in compliance with her case plan. Initially, mother had been granted supervised visitation with her children for an hour, two times per week. Later, she was granted longer unsupervised visits, and she visited the children for 16 hours per week. The foster mother reported that mother’s bond with the children continued to grow and it was

²When mother left the children with a neighbor and a relative, they were running fevers. In addition, the children’s immunizations were not current and C.M. had severe eczema that had been left untreated.

obvious the children enjoyed spending time with her. Observing that mother had been “very diligent with her case plan,” Agency recommended that the children be reunified with her. It was further recommended that dependency for the children continue and family maintenance services be provided. At a status review hearing on March 10, 2010, the juvenile court adopted Agency’s recommendations and proposed orders and returned the children to mother’s care.

In the next status review report, prepared in August 2010, Agency stated, “[M]other has been doing exceptionally well with her case and with the children.” Mother was using skills from her parenting classes, giving the children nutritious food, setting limits with the children, and using “time outs” as a form of discipline. The report noted that C.M. had “progressed well with his speech and [was] talking much more effectively since the beginning of the case.” The twins also were talking more and were “very outgoing.” The Agency recommended that the dependency case be dismissed, with mother to receive sole custody of the children. On August 20, 2010, the juvenile court granted mother sole legal and physical custody of the children and terminated jurisdiction.

In the present case, the children came to the attention of Agency when mother was arrested for being under the influence of a controlled substance. Shortly after midnight on October 15, 2011, police officers made contact with mother and her boyfriend, F.T., in a motel parking lot. They admitted to smoking methamphetamine recently. After submitting to field sobriety tests, mother and F.T. were arrested for being under the influence of methamphetamine. As an officer placed mother in a patrol car, she asked, “What about my babies? They are in my motel room.” Officers went to mother’s motel room and found four small children asleep on the bed. The bathroom door was open with the light on, and an officer saw two glass pipes, a white crystal substance in a plastic baggie, and a plastic baggie and a metal container that appeared to contain marijuana.

Three of the children were mother's. Mother told the police that she was babysitting the fourth child, whose mother was at a casino. Mother was crying and said that she and F.T. had only left the children for two minutes to throw out the trash. She said she was sorry for leaving drugs there and asked what was going to happen to her children. Agency was contacted; a social worker arrived at the motel and took custody of all four children. Mother's three children were placed in a foster family agency home.

On October 18, 2011, a juvenile dependency petition was filed on behalf of mother's children; the petition was later amended. As amended, the petition alleged that mother failed to protect her children, and her substance abuse rendered her unable to provide regular care. (§ 300, subd. (b).) It was further alleged that mother failed to support her children as she was incarcerated and could not arrange for adequate care. (§ 300, subd. (g).) On October 19, 2011, the juvenile court ordered the children detained. The court ordered supervised visitation, two times per week.

In a jurisdiction/disposition report filed on November 7, 2011, Agency recommended that (1) the children be declared dependents of the court and (2) mother not be offered reunification services, pursuant to section 361.5, subdivision (b)(13).³ Agency recommended that visitation be reduced to one visit per month. It further recommended that a section 366.26 hearing be calendared within 120 days to determine a permanent plan for the children.

According to the report, mother met with a social worker on October 27, 2011. Mother reported that, the previous day, she completed a substance abuse evaluation with Tulare County Prevention Services. She also had begun attending NA/AA and attended meetings on October 23, 24, and 26, 2011. Mother explained that, after the children were

³Section 361.5, subdivision (b)(13), authorizes a juvenile court to deny a parent reunification services when it finds, by clear and convincing evidence, that the parent has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention.

returned to her in 2010, she and her children lived with her sister in Visalia. Soon after the children were returned to her, mother met F.T. and he began living with her. Mother's sister moved out of the house and mother was unable to pay the rent. Mother, F.T., and the children stayed with friends from about January to August or September 2011. At that point, they began living in the motel where mother and F.T. were arrested. Mother told the social worker that she started using methamphetamine again when she lived with friends. She believed the stress of not having a stable home triggered her relapse. Mother reported that she would smoke methamphetamine about once a week, and her children were not present when she or F.T. used drugs.

Mother said she loved her children and would obtain appropriate services on her own because she intended to regain custody of her children. The report stated that all three children were "developmentally on task" and no mental or emotional health issues were known at that time. Mother visited the children, and they were all happy to see each other. During a visit on October 27, 2011, mother was sad and cried. C.M., aware of his mother's emotions, told her not to be sad. The next day, mother and the paternal grandparents of the twins attended a visit, and the children were happy to see mother and the grandparents.

A jurisdictional hearing was held on November 10, 2011. The juvenile court dismissed the allegation of failure to support. (§ 300, subd. (g).) For the claim of failure to protect, the amended petition alleged, "On or near 10/15/11, the three children were found in a motel room (along with another child) without supervision. Methamphetamine, marijuana, and drug paraphernalia were accessible to the children." The court struck the words "without supervision," and otherwise found true the allegations relating to failure to protect. (§ 300, subd. (b).) The court also found true the claim of abuse of a sibling (§ 300, subd. (j)), based on the prior juvenile dependency case.

The juvenile court proceeded to disposition. Mother's attorney asked the court to provide reunification services, pointing out that she previously had completed services successfully and, since the current detention, she had actively participated in services, including parenting classes, NA/AA meetings, and drug testing. The attorney representing the children agreed with Agency's recommendation to deny reunification services under section 361.5, subdivision (b)(13). The children's attorney disagreed with Agency's recommendation on visitation, however, and requested that mother's visitation schedule remain as ordered (two visits per week).

The juvenile court found that section 361.5, subdivision (b)(13), applied to mother. Finding that mother failed to prove that reunification was in the best interest of the children, the court denied her reunification services. Mother was granted weekly visitation. A section 366.26 hearing was set for March 2, 2012.

On November 15, 2011, mother filed a notice of intent to file a writ petition in pro per. This court dismissed the petition because it did not satisfy procedural requirements. (*S.R. v. Superior Court* (Jan. 25, 2012, F063703 [nonpub. opn.])

Agency filed a section 366.26 report on February 9, 2012. The report recommended a permanent plan of adoption for all three children by the current foster parents. The children had been placed with relatives⁴ on December 12, 2011. The children were observed to have significant behavioral issues; they acted out sexually, had extreme tantrums on a frequent basis, and were hyperactive. The foster parents were "patient and understanding with the children" and "developed a routine, boundaries, and structure to help the children control their behaviors." According to the report, despite the children's behavioral problems, the foster parents "have a strong commitment to the minors, and are clear in their desire to adopt the children."

⁴The foster parents were a married couple, and the foster mother was related to the twins' father. However, the foster parents had not known the children well before they were placed in the home.

The foster mother described C.M. as withdrawn and fearful, with a sad expression most of the time. He had severe tantrums on a daily basis and was destructive. He broke the slats on his sister's toddler bed and destroyed many of the toys his siblings received for Christmas.

J.W.C. appeared to have autistic tendencies and impaired social functioning. The foster mother reported that his teachers "put him at a table where he will be content to be on his own doing an activity for up to an hour because it is so difficult to have him interact with the other children." She also said that he seemed "miserable," and he cries, whines, and has "babyish expressions." J.W.C. was observed repeatedly banging his head while he sat in his car seat. He kicked and spat when he was first placed with the foster parents. J.W.C. was also observed playing in the backyard with his siblings and the foster parents' grandchild. He began to cry when the television channel was changed. He calmed down immediately and smiled after the television was returned to the program he wanted to watch.

J.C.C. exhibited inappropriate acting-out behaviors. The foster mother reported that she would lie down, open her legs, and expose herself. She also would bang her head, kick objects, and cry and scream. The foster mother described J.C.C. as acting like a parent with her twin brother and watching out for both her siblings.

In addition, the children all had poor sleep patterns. When eating, the children would shovel their food and eat very fast. The twins fought over food. Agency determined that the children had significant mental health and behavioral needs, and each was referred to Visalia Youth Services.

Because the foster mother observed sexualized behavior by all three children, they underwent forensic medical exams. For the boys, there was no evidence of trauma to the genitalia, although this did not exclude the possibility that abused had occurred. As to J.C.C., it was difficult to tell if there had been trauma to her genitalia because the examining nurse was not able to see whether there was a tear in J.C.C.'s hymen. A

doctor, however, was “concerned that [J.C.C.’s] behaviors and [the] physical exam indicate that she has been sexually molested.” At a supervised visit, C.M. told a social worker, ““He touched my wiener and made me do nasty things.”” The social worker asked C.M. to whom he was referring, but before C.M. could answer, the foster mother said, ““It’s his former foster parent.”” According to the report, “[C.M.] did not appear to deny what the foster parent had stated.”

Mother visited with the children consistently after they were detained. A social worker who observed the visits stated that mother was always happy to see the children and the children appeared to enjoy the visits. J.W.C. tended to go off and play by himself, C.M. played with toys, sometimes grabbing toys from other children, and J.C.C. “tend[ed] to be clingier to her mother.” During a visit in January 2012, J.W.C. asked mother where F.T. was, and she responded that he was at home. J.C.C. said, ““[F.T.] hit me with a belt,”” and mother said, ““No, he didn’t.”” At the end of the visit, the children ran to their foster parents calling them mom and dad. They showed off the fruit snacks they received during their visit.

The social worker continued: “The children appear to be comfortable with their mother, but they do not show great amounts of excitement when they see her or any sadness when they say goodbye. Overall this worker has observed that [the] children show much more emotion and excitement to see their foster parents when the visits are over. It is clear that the mother loves her children and cares about them, but it does not appear that the relationship they have is strong enough to interfere with it being in the best interest of the children to be in a stable, permanent adoptive home.”

The report stated that the prospective adoptive parents “are committed to the children and to raising them together in a secure and safe environment.” The report acknowledged that “the children do have a number of significant behavioral issues” but stated, “those issues are being addressed and the prospective adoptive parents have seen progress in the children over the past two months since they have been placed in the

home.” Agency determined that the prospective adoptive parents were “capable of meeting all of the children’s physical, behavioral, developmental, and emotional needs by providing them with a stable and nurturing home.” It was noted that the prospective adoptive parents have extensive experience working with children and were aware of how to meet the children’s needs.

On February 22, 2012, mother filed a request to change the court’s order. (§ 388.) Mother requested the return of her children with family maintenance services or, in the alternative, reunification services. Mother pointed out that she had enrolled in a 14-week alcohol and drug treatment program and attended NA/AA meetings on a regular basis. She maintained contact with the children through visitation and by attending their doctors’ appointments. She reported that the children told her how much they missed her and told her they wanted to go with her. Mother stated that she loved and missed her children very much and argued that granting her request was in the children’s best interest.

On March 2, 2012, the juvenile court heard argument on whether to conduct a full evidentiary hearing on mother’s request. The court reviewed mother’s prior history and determined there was not a sufficient showing either of a change of circumstance or that it would be in the best interest of the children to grant the request. As a consequence, the court denied the request.

On March 15, 2012, the juvenile court held a section 366.26 hearing. Mother’s attorney offered no evidence but asked the court not to terminate her parental rights. Her attorney argued that mother had a strong, established relationship with the children and termination would be detrimental to them. The attorney for the children agreed with Agency’s recommendation that mother’s parental rights be terminated. She argued that the court “must look to stability and security for all of these children” and “freeing them for adoption would give them that opportunity for stability and permanency.”

The court’s first task was to determine whether the children were likely to be adopted. (§ 366.26, subd. (c)(1).) The court recognized that the children had behavioral problems, but observed that the prospective adoptive parents “have made clear that they will continue the path of adoption, and it is their dedication to the children that make[s] these children adoptable” For this reason, the court found the children were adoptable by clear and convincing evidence.

Next, the court addressed mother’s argument that the parental-relationship exception of section 366.26, subdivision (c)(1)(B)(i), applied. The court had no doubt that mother loved her children, but stated that this was not enough. The court found that mother had not met her burden of showing that the parental-relationship exception applied, explaining, “She has an obligation to show more than frequent and loving contact and visits or pleasant visits, and in this case the benefit to the children [of] the permanence and stability of adoption outweighs any loss of contact or the loss of the parental relationship.”

The court ordered mother’s parental rights terminated and referred the children to the county adoption agency for adoptive placement. Mother filed this appeal on March 26, 2012.

DISCUSSION

By the time juvenile dependency proceedings reach a section 366.26 hearing, the focus has shifted away from family reunification; instead, the purpose of the hearing is to select and implement a permanent plan for the dependent children. (*In re S.B.* (2009) 46 Cal.4th 529, 532.) The Legislature’s preferred permanent plan is adoption. (*In re D.M.* (2012) 205 Cal.App.4th 283, 290.) “At a section 366.26 hearing, the court must terminate parental rights and free the child for adoption if [1] it determines by clear and convincing evidence the child is adoptable within a reasonable time,⁵ and [2] the

⁵The phrase used in section 366.26, subdivision (c)(1), is “likely the child will be adopted.” To find it likely the child will be adopted, “[a]ll that is required is clear and

parents have not shown that termination of parental rights would be detrimental to the child under any of the statutory exceptions to adoption found in section 366.26, subdivision (c)(1)(B)(i) through (vi). (§ 366.26, subd. (c)(1).) An exception applies only if the ‘court finds a compelling reason for determining that termination would be detrimental to the child.’ (§ 366.26, subd. (c)(1)(B).)” (*Id.* at p. 290.)

Mother challenges the juvenile court’s findings that (1) the children are adoptable, and (2) the parent-child relationship exception does not apply.

I. Adoptability

Determining whether a child is adoptable “focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt.” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1311.) Although a finding of adoptability does not require a showing that a particular person wants to adopt the child, the existence of prospective adoptive parents serves as “evidence that the child’s age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child.” (*Id.* at pp. 1311-1312.)

Despite the requirement that adoptability be shown by clear and convincing evidence, “it is nevertheless a low threshold: The court must merely determine that it is ‘likely’ that the child will be adopted within a reasonable time.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.) “We review that finding only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion. It is irrelevant that there may be evidence which would support a contrary conclusion.” (*Id.* at p. 1292.) In other words, on appeal, “the clear and convincing test disappears and ‘the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526.)

convincing evidence of the likelihood that adoption will be realized within a reasonable time.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406.)

On appeal, mother contends that the court's finding that the children are adoptable, based solely on the existence of the prospective adoptive parents, is not supported by substantial evidence. She argues, "Even crediting the [prospective adoptive parents'] commitment at the present time to adopt the children, the children's general characteristics were so severe, and their tenure in the [prospective adoptive parents'] home so short-lived, that [their] willingness to adopt was simply not enough to overcome the rest of the evidence"

Mother recognizes, as she must, that there are cases in which children with severe behavioral problems have been found adoptable based on the existence of prospective adoptive parents. For example, in *In re I.I.* (2008) 168 Cal.App.4th 857, 864, kindergarten-aged twin girls were described as having long temper tantrums, sometimes crying for hours, and they both had symptoms of attention deficit hyperactivity disorder (ADHD) and problems with bedwetting. One twin showed signs of developmental and language delays. The other twin sometimes urinated on the floor to gain attention and frequently masturbated; both twins were flirtatious with men. (*Ibid.*) They sought attention, talked incessantly, and tended to lie. (*Id.* at p. 865.) They had symptoms of reactive attachment disorder, including chronic anxiety, rage and intense grief, and had exclusive attachment with each other. (*Id.* at p. 868.) Despite the twin girls' behavioral problems, a potential adoptive parent was interested in adopting them, and the juvenile court found that it was likely they would be adopted. (*Id.* at p. 869.)

The appellant-parent argued that the children's negative characteristics precluded a finding of adoptability, but the Court of Appeal rejected this argument because, in fact, "prospective adoptive placement[] *had* been found for the children." (*In re I.I., supra*, 168 Cal.App.4th at p. 871.) In addition, the court observed, "the children indisputably had positive characteristics that supported the finding of adoptability." (*Ibid.*) The twins were healthy and had no major medical issues, and they were described as good-looking and affectionate. A social worker testified that female twins are particularly desirable

candidates for adoption. For these reasons, the reviewing court concluded that the finding of adoptability was supported by substantial evidence. (*Ibid.*)

In *In re I.W.*, *supra*, 180 Cal.App.4th at pages 1522-1523, the appellant-parent argued there was no substantial evidence that her son was adoptable even though his foster parents were willing to adopt him. She listed the child's alleged negative characteristics: He was born with a positive toxicity screen and tested positive for tuberculosis; he threw tantrums and had severe behavior problems; he had threatened to commit suicide and had run away; he had posttraumatic stress disorder, ADHD, and a learning disorder; and he did not have a positive relationship with his foster mother. (*Id.* at p. 1525.) The appellant-parent also suggested that there was insufficient evidence of the foster parents' commitment to adopt. (*Ibid.*) The Court of Appeal concluded that the existence of prospective adoptive parents was sufficient evidence to support the juvenile court's finding of adoptability. (*Id.* at p. 1527.)

The court explained:

“Conceivably, there could be some legal impediment to adoption by a prospective adoptive parent that, in turn, might preclude reliance on this parent's interest as a basis for an adoptability finding. [Citation.] Or, there could be facts that contraindicate adoptability notwithstanding the [prospective adoptive] parent's interest. Here, however, mother failed to develop any issue along these lines. Had she done so, the juvenile court would have had the benefit of her viewpoint and might have found differently. Absent such an impediment or evidence, it follows that the foster parents' interest in adopting [the child] is sufficient to support the juvenile court's finding of general adoptability.” (*In re I.W.*, *supra*, 180 Cal.App.4th at pp. 1526-1527.)

Similarly, in *In re Helen W.* (2007) 150 Cal.App.4th 71, 74, 80, a foster mother's willingness to adopt a sister and brother was sufficient to support the juvenile court's finding of adoptability, although both children suffered from various physical and development conditions.

Here, the foster parents showed a clear desire to adopt the children. At the section 366.26 hearing, mother presented no evidence or argument regarding the foster

parents' suitability to adopt or the children's general adoptability. Consequently, the foster parents' interest in adopting the children was sufficient to support the juvenile court's finding of adoptability. (See *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

We are not persuaded by mother's attempts to distinguish the present case from the many cases that have found children with behavioral issues to be adoptable. First, she argues that the children in those cases all had positive attributes that do not exist in this case. This argument is not convincing because mother focuses solely on the negative characteristics of her children. She ignores evidence indicating that the children have good relationships with their foster parents (after visits with mother, the children were excited to see them and called them mom and dad) and that the children have shown progress since being placed with the foster parents. In addition, the children are generally healthy and have no major medical issues. (See *In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313 [rejecting challenge-to-adoptability finding where appellants supported their claim "by picking and choosing evidence from the record in support of their argument"].)

Second, mother argues that the children's "placement was too new, and the disclosure of their extreme behavior and personality problems too recent, to conclude that the mere existence of the [prospective adoptive parents] could overcome all other [negative] factors" Mother offers no authority for the proposition that a child must be placed with prospective adoptive parents for a certain amount of time before the prospective adoptive parents' stated intention to adopt will be credited. Here, the children had lived with the foster parents for three months at the time of the section 366.26 hearing, and the foster parents were well aware of their behavioral issues as the foster mother reported the children's behavior to social workers and doctors. Despite the children's issues, the foster parents were committed to adopting them. In effect, mother asks this court not to believe the prospective adoptive parents when they say they want to adopt the children, but we may not reweigh the evidence in this manner.

Rather, “[a]ll conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision” (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313.) For these reasons, we reject mother’s challenge to the court’s adoptability finding.

II. Parent-child relationship exception

As we have discussed, if a juvenile court determines by clear and convincing evidence that a child is adoptable, the court must terminate parental rights and free the child for adoption unless a statutory exception applies. (§ 366.26, subd. (c)(1)(A) & (B); *In re D.M.*, *supra*, 205 Cal.App.4th at p. 290.)

In the present case, mother contends she established that the parent-child relationship exception applies. (§ 366.26, subd. (c)(1)(B)(i).) 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 circumstances that “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Ibid.*)

In *In re Autumn H.* (1994) 27 Cal.App.4th 567, the Court of Appeal interpreted former section 366.26, subdivision (c)(1)(A), which contained the exception now set forth in section 366.26, subdivision (c)(1)(B)(i). It interpreted the exception to require a finding that the parent-child “relationship 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.*, *supra*, at p. 575.)

“In other words, 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. 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.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

The parent has the burden of making this showing. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 574.)

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.)

Mother argues that she cared for the children throughout the majority of their lives and, when they were out of her care, she faithfully and lovingly visited them. Agency does not dispute that mother maintained regular contact with the children. As the juvenile court observed, however, mother had an obligation to show more than frequent and loving visits. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 555 ["A parent must show more than frequent and loving contact or pleasant visits"].)

The court also must find that the strength and quality of the parent-child relationship outweighs the security of adoption. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother points out that, when the first dependency case ended, the children were described as "very attached" to mother. After the children were removed for a second time, they were described as excited and happy to see her and visits went well.

On the other hand, a social worker observed that the children did not show either great excitement to see mother or any sadness at the end of their visits, and also that the children showed more emotion when they saw their foster parents. Mother argues that the social worker's observations should be viewed with suspicion because the social worker did not seek input from a mental health expert and because the children's placement with the foster parents was so new; but, again, we may not reweigh the evidence in this manner. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 955 [reviewing finding that parent-child relationship exception did not apply, appellate court could not reweigh juvenile court's implicit finding that therapist was credible].) On the record before us, we conclude that the juvenile court could reasonably determine that the

children’s continued relationship with mother did not outweigh the benefit of a permanent home with adoptive parents. Stated differently, we cannot say that the record *compels* a finding that the children’s relationship with mother outweighs the benefits of adoption. (See *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528 [where appellant had burden of proof at trial, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law”].)

Mother also asserts that the benefit of preserving the children’s relationship with her outweighed the benefit of the plan of adoption because at least two of the children suffer from reactive attachment disorder, and “their continuity of attachment is a critical factor in their well-being.” This argument is unavailing. Mother did not raise this argument at the section 366.26 hearing, and she does not cite anything in the record to support her assertion that continuing a relationship with her is critical to the children’s well-being.

DISPOSITION

The juvenile court order is affirmed.