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

In re M.T., a Person Coming Under the Juvenile  
Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MATTHEW T.,

Defendant and Appellant.

F070029

(Super. Ct. No. 12CEJ300823-1)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,  
Judge.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Daniel C. Cederborg, County Counsel, and Amy K. Cobb, Deputy County  
Counsel, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Kane, J. and Franson, J.

Matthew T. (father) appeals from the juvenile court's order terminating his parental rights to his son M., born in 2008. He contends the child has a beneficial relationship with him that should have prevented termination of his parental rights. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i).<sup>1</sup> We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In November of 2012, father, age 43, took M. to the hospital to be evaluated for possible sexual molest by M.'s paternal grandfather. The hospital reported finding no indication of molest. When father returned to the paternal grandparents' home where father lived with M., he became violent and the police were called. The Fresno County Department of Social Services (department) was called and M. and his older half-sibling D.<sup>2</sup> were removed. Wendy C., M.'s mother<sup>3</sup>, was interviewed and appeared to be under the influence. Mother said she was scared of father and wanted to leave the children with the paternal grandparents. She thought M. was better off with father and paternal grandparents.

Both D. and paternal grandmother opined that father was using drugs. Mother and paternal grandfather both described father as delusional and having severe anger management issues. When father became violent with paternal grandfather, D. got between the two men and was hit with something father threw. Father denied substance abuse, mental health or anger issues, but was placed on a section 5150 hold.

The department filed a section 300 petition on November 8, 2012, alleging that M. was at substantial risk of serious physical harm because mother left M. in father's care and father was hospitalized pursuant to section 5150. The petition further alleged that

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

<sup>2</sup> Father's 16-year-old son is not a subject child of this appeal.

<sup>3</sup> Mother lived separately from father and is not a party to this appeal.

father displayed intense anger and hostility towards his own parents, accusing paternal grandfather of molesting M. despite the hospital finding no evidence of molest. M. was detained and father offered services and supervised visitation.

Father tested positive for methamphetamine and alcohol on November 16, 2012. In January of 2013, he began outpatient drug treatment, but was discharged from the program after police were called to remove him due to his anger toward another client. Father then accused a substance abuse specialist of being involved with mother and a sex ring she affiliated with. A psychological evaluation was recommended.

In April of 2013, after various continuances, M. was declared a dependent of the court, removed from the custody of mother and father, and reunification services ordered. Services for father included a parenting class, domestic violence, substance abuse and mental health evaluations and recommended treatment. He was also ordered to random drug test.

In June of 2013, the juvenile court adopted a mediation agreement which called for placement of M. with the paternal grandparents. Father was to have weekly supervised visits. Father did not engage in the mediation and refused to sign any releases of information.

By the time of the six-month review in October of 2013, father completed parenting and domestic violence classes and a psychological evaluation, although he disagreed with the diagnosis of intermittent explosive disorder and initially refused therapy. After various delays, father began weekly therapy in September of 2013. He continued to decline drug testing as he believed the tests were falsified.

M. was making significant progress overcoming encopresis.<sup>4</sup> He was in kindergarten and attending therapy. Weekly supervised visits with father went well, but

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<sup>4</sup> Encopresis is also known as paradoxical diarrhea, which is voluntary or involuntary fecal soiling in children who have been toilet trained.

visits did not progress to unsupervised because father failed to comply with the rest of his case plan. Mother did not seek placement of M. and wanted him to remain with the paternal grandparents. At the suggestion of the department, the juvenile court continued prior orders and reunification services for father.

In November of 2013, the juvenile court denied father's request for a substitute drug testing program.

In the report prepared in anticipation of the 12-month review hearing, the social worker reported that M. was attached to his paternal grandparents and said he wanted to live with them and continue visiting with mother and father. Although father attended his weekly therapy sessions, he had not met his treatment goals as yet. Father tested negative for drugs and alcohol in December of 2013, but he failed to follow through on proof of 30 days of drug testing. Although father attended many 12-step meetings, he had not completed a substance abuse program or met his counseling goals of learning to parent without anger.

At the 12-month review hearing held March 7, 2014, father continued to deny his diagnosis of intermittent explosive disorder and would not admit he had an anger problem. Instead, he claimed to be standing up for his rights.

The juvenile court terminated father's reunification services. In doing to, it found that reasonable services had been offered father and father's "progress toward alleviating or mitigating the causes necessitating [M.'s] placement in foster care has been moderate." But the juvenile court also found there had not been "a sufficient showing of a substantial probability of return by the next review hearing, which is less than two months away." While father had "consistently and regularly" visited M., the juvenile court noted that the case was

"actually beyond the 12-month review and just essentially a few weeks shy of the 18-month review, [and] father still remains on supervised visits for the reasons stated in the report and there hasn't been a showing of significant progress resolving all the problems which led to the minor's

removal. I think there's been a showing that he has recently shown negative tests as far as the issues of substance abuse. But as identified in the reports and clearly as has been discussed with [father], there were other issues that caused concern which are many of the reasons why he remains on supervised visits and I don't see that there's been enough evidence to show the likelihood of return of [M.] within the next six to seven weeks."

The juvenile court then found that M. would not likely be returned in the "short period of time remaining," terminated reunification services, and set the case for a section 366.26 selection and implementation hearing to be held June 20, 2014.

Father then filed a notice of intent to file an extraordinary writ. The writ (case No. F069000) was subsequently denied on May 28, 2014.

In April of 2014, father filed a section 388 petition for modification of orders seeking reinstatement of reunification services based on his "self enroll[ment] into a drug treatment program." The petition was summarily denied by the juvenile court.

By June of 2014, father had "nearly" completed the primary phase of inpatient treatment and would then transfer to aftercare. He was compliant with his NA meetings as required. In July of 2014, father requested a contested section 366.26 hearing; mother submitted on the recommendation to select adoption as the permanent plan and terminate parental rights.

The report prepared in anticipation of the section 366.26 selection and implementation hearing recommended adoption as the permanent plan for M. The report stated that M. continued in weekly therapy and long-term placement with the paternal grandparents was recommended by the therapist. Father continued with weekly two-hour visits. At a visit observed in May 2014, M. stayed close to paternal grandfather, but interacted with his father when directed. The observer described M.'s relationship with father as "a friendly visitor-type relationship." During the visit, father spent a significant amount of time speaking to the observer about his case progress, rather than what was in his or his child's best interests. During visits with father, M. would ask paternal grandparents, who supervise the visits, to stay with him.

The social worker opined that neither mother nor father was capable of providing a stable and safe home for M. M. was bonded to his paternal grandparents, who were prepared to adopt him.

At the section 366.26 hearing in September of 2014, father testified that he took custody of M. from mother when M. was about four weeks old and they lived with the paternal grandparents. D. came to live with the family in November of 2008. Father provided for M.'s day-to-day care.

Father stated he had received four unsupervised visits during the past six weeks. At the visits, according to father, the two of them bake, go to the park or grocery store, play games, color and read. According to father, M. calls him "Daddy" or "Matt" and he calls the paternal grandfather "Grandpa." Father attributed M.'s encopresis to father's removal from the household. Father thought the idea that there might be a psychological aspect to M.'s encopresis "insane." He rejected that he needed medication for the issue and thought M. needed loving care instead.

At the time of the hearing, father had three weeks left to complete his outpatient counseling program and he remained drug free. Father thought he and paternal grandparents had all grown due to mistakes that led to the dependency.

The juvenile court, in selecting adoption as the permanent plan and terminating parental rights, stated it found by clear and convincing evidence that M. "will be adopted and adoption is an appropriate plan given his age and the other factors that are identified in the report in regards to his adoptability." The juvenile court then discussed father's assertion that he and M. had "such a strong relationship that it would be detrimental to terminate parental rights." The juvenile court agreed that father and M. had a "positive relationship," noting that M. knew who father was and enjoyed spending time with him. But the juvenile court did not think it was "such a strong beneficial relationship" that terminating father's parental rights would be "detrimental" to M. The juvenile court stated that M. had spent the majority of his life with the paternal grandparents and that M.

sees them “primarily” as the ones giving him “the stability, permanence and security that he needs.” The juvenile court found that father had not shown evidence of a beneficial relationship and that there was no showing of detriment to M. in terminating father’s parental rights and placing M. for adoption.

### **DISCUSSION**

Father contends the juvenile court erred when it found that the exception for the beneficial relationship with a parent did not apply to prevent the termination of his parental rights. We are not persuaded.

Section 366.26 requires the juvenile court to terminate parental rights and select adoption as the permanent plan for a child who cannot be returned to parental custody and who is likely to be adopted, unless a statutory exception applies. (§ 366.26, subd. (c)(1).) One exception is at issue here, namely that parental rights should not be terminated where “termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.” [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*))

#### Standard of Review

We affirm the juvenile court’s factual findings if they are supported by substantial evidence. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) “We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm if the order is supported by substantial evidence even if other evidence supports a contrary conclusion.” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

In addition to making factual findings, however, the juvenile court is required to balance the benefit a child derives from maintaining parental relationships against the benefit he or she derives from being adopted. Here, the juvenile court struck that balance in favor of adoption. We review that portion of its order under the deferential abuse of discretion standard. As the court noted in *Bailey J.*, this is “a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the [parental] relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption. [Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

#### *Beneficial Parental Relationship*

“To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) “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 Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by ‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs.’ (*Id.* at p. 576.)” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 689.)

Overcoming the statutory preference for adoption and avoiding the termination of parental rights requires the parent to show both that he or she has maintained regular visitation with the child and that the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).) “Sporadic visitation is insufficient to satisfy the first prong” of the exception. (*In re C.F., supra*, 193 Cal.App.4th at p. 554.) Satisfying the

second prong requires the parent to prove 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. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Evidence that a parent has maintained “‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship.” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316.)

The juvenile court found that father satisfied the first prong of the parent-child exception, because father faithfully attended visits with M. However, the juvenile court found that father had not satisfied the second prong of the beneficial parent-child relationship exception which required father to show that he shared a relationship with M. 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 Autumn H., supra*, 27 Cal.App.4th at p. 575.)

In determining whether the beneficial parent-child relationship exception applies, the juvenile court takes into consideration “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs ....” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 576.) “‘Interaction between natural parent and child will always confer some incidental benefit to the child[,]’” but that is insufficient to meet the standard. (*In re C.F., supra*, 193 Cal.App.4th at p. 555, quoting *In re Autumn H., supra*, at p. 575.) “[T]he court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

There is substantial evidence to support the juvenile court's finding that M. would benefit more from the permanency of adoption than he would from maintaining a legal relationship with father. Although father was appropriate with M. during visits, and shared a positive relationship, there was nothing to indicate that M. had "a substantial, positive emotional attachment" to father, or that he would be greatly harmed if that relationship was severed. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) In fact, father and M.'s relationship was observed to be of "a friendly visitor-type relationship."

Father emphasizes that he had custody of M. from shortly after birth until he was detained at age four. But the juvenile court must consider the strength of the parent-child relationship as it exists at the time of the section 366.26 hearing, not at the time of the initial detention. (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 557.) At the time of the section 366.26 hearing, M. was six years old and had not lived with father for 22 months. M. was happy and secure living with his paternal grandparents and he looked to them for all his needs.

Father compares the facts of this case to those in *In re S.B.* (2008) 164 Cal.App.4th 289, in which the court concluded the juvenile court erred in declining to apply the beneficial parent-child relationship exception. (*Id.* at pp. 300-301.) In *S.B.*, the child was five years old, the appellant father had been her primary caretaker for three years, she displayed a strong attachment to father, and he had "complied with every aspect of his case plan." (*Id.* at pp. 293, 298, 300-301.) Here, M. developed a significant bond with his parental grandparents, with whom he and father had lived even prior to this dependency case being initiated, while father was slow to participate in his reunification plan. Father rejected the idea of mental health therapy, did not feel he had an anger management issue, and it took him quite awhile to participate in substance abuse treatment or drug test consistently, and he had not yet completed drug treatment.

M. deserved to have his custody status promptly resolved and his placement made permanent and secure. Given all of the facts of this case, we conclude the juvenile court

struck the proper balance when it found that the benefit to M. from maintaining his relationship with father was outweighed by the benefits he would obtain from having a permanent adoptive home. There is substantial evidence to support the juvenile court's finding that the beneficial parent-child relationship does not apply, and the order terminating father's parental rights was not an abuse of discretion.

#### **DISPOSITION**

The order terminating father's parental rights as to M. is affirmed.