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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ADAM P., a Person Coming Under the  
Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

CASSANDRA H., et al.,

Defendants and Appellants.

F070682

(Super. Ct. No. JJV065591A)

**OPINION**

APPEAL from orders of the Superior Court of Tulare County. Hugo J. Loza,  
Commissioner.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and  
Appellant Cassandra H.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and  
Appellant Shaun P.

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

Cassandra H. (mother) appeals from an order terminating parental rights to her son Adam P. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> She contends the juvenile court erred in declining to apply the beneficial parent-child relationship exception to adoption. Adam's father, Shaun P. (father), also appeals. He contends the order terminating his parental rights must be reversed because the juvenile court previously entered an order granting legal guardianship to Adam's maternal grandmother and issued letters of guardianship, but the guardianship was never terminated. While we find no error in the juvenile court's decision not to apply an exception to adoption, we agree that the case must be remanded for the juvenile court to determine the effect of the grant of legal guardianship. Accordingly, we conditionally reverse the orders terminating parental rights and remand for further proceedings.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the attention of the Tulare County Health and Human Services Agency (Agency) in July 2011, when the Agency investigated a referral that mother had said she was going to kill herself and two-year-old Adam. Mother admitted to a social worker that she was depressed, but recanted her statement. Mother admitted using methamphetamine, and both mother and father admitted using marijuana. They both wanted to participate in drug services. Before the Agency could provide the family with services, father was arrested for domestic violence after he pushed mother during an argument, causing her to hit her face with the phone she was holding.

The Agency filed a dependency petition alleging Adam came within the provisions of section 300, subdivisions (b) and (g) based on domestic violence, the parents' drug use, mother's depression, and father's incarceration. Adam remained with mother, but was detained from father. On August 30, 2011, the juvenile court dismissed

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

the domestic violence allegation, but found the other allegations true, and adjudged Adam a dependent. The juvenile court removed Adam from father's custody and placed him with mother on family maintenance. Father was denied reunification services based on his incarceration.

In January 2012, mother's therapist reported that mother met the criteria for bipolar disorder and cannabis dependence. In February 2012, mother participated in a psychotropic assessment for medications; the therapist told mother she was severely depressed and may require psychotropic medications.

In May 2012, father told mother that he wanted to come back into her home when he was released from prison. The social worker spoke with Adam's attorney and it was decided that Adam would be removed if father moved back into mother's home. Mother was informed of the decision and signed a letter of understanding.

On June 19, 2012, the social worker met with mother and Adam at mother's home. Mother said she felt better; she appeared happy to the social worker. Adam also appeared happy and smiled during the entire visit. Mother stated father was out of jail and living with his mother in Fresno. Mother was reminded that father was not to reside with her and he was not allowed to have contact with Adam.

Mother received family maintenance services until October 25, 2012, when police found three-year-old Adam wandering around outside of mother's home at 5:15 p.m.; he was unsupervised and dressed only in underwear. Mother and father were together in a bedroom in the home. Father admitted he had been smoking synthetic marijuana; there were several "joints" and "roaches" visible in the bedroom and within Adam's reach. Mother and father said they were watching a movie with Adam when they fell asleep. Mother stated that Adam got out of the house "all the time." Mother knew father was not supposed to be around Adam and denied that father lived there. Mother and father were arrested for child endangerment, and Adam was taken into protective custody.

Based on this incident, the Agency filed a section 387 supplemental petition alleging the previous disposition had not been effective in protecting Adam. On October 30, 2012, Adam was placed with his maternal grandmother, Lisa H. In January 2013, the juvenile court found the petition's allegations true, removed Adam from his parents' custody, and ordered reunification services for mother and father. Mother was ordered to participate in random drug testing, Narcotics Anonymous/Alcoholics Anonymous (NA/AA) meetings, an anger management program, a domestic violence support group, a parenting education program, and individual counseling. Mother was granted one supervised four-hour visit per week; the Agency was given discretion to increase visits in length and frequency, and to allow unsupervised and overnight visits.

Father's services were terminated at the July 2, 2013 review hearing due to his failure to comply. Lisa, who had been designated to arrange and supervise mother's visits, reported that mother visited regularly during the first three months of 2013, and interacted with Adam appropriately by playing with him, and watching television and movies. In March 2013, the social worker authorized mother to have unsupervised visits with Adam. Lisa reported that mother did not visit Adam the weeks of May 20 and May 27, 2013. The Agency recommended mother's visits return to one four-hour supervised visit per week, as mother had relapsed in her substance abuse treatment. The juvenile court left mother's visitation at four hours once per week, but stated she could have more frequent visits as long as they were supervised, and again gave the Agency discretion to lift supervision and allow for overnight visits if mother continued to do well.

As of July 2013, mother had made moderate progress on her services; she completed an anger management program and 15 out of 26 sessions of a domestic violence treatment program. Mother, however, continued to engage in altercations with father; police were called to mother's home at the end of May 2013 when she got into an argument with him because she did not want him staying in her home. The social worker reported that the parents and Adam appeared to have a good relationship; he had been

observed to be happy when he was around his parents, as evidenced by him smiling and laughing. The juvenile court granted mother an additional six months of reunification services and set a review hearing for December 19, 2013.

The review hearing was held on January 16, 2014.<sup>2</sup> The social worker reported that mother had visited Adam regularly, and her visits were observed to be appropriate, but she had not participated regularly in her court ordered services. Since the last review hearing, she had not attended any parenting classes, had missed numerous drug tests, had not participated in NA/AA meetings, had not attended individual counseling and had not regularly attended domestic violence services. Mother claimed she had not participated due to an unstable housing situation; she had been evicted from her apartment in Tulare County and moved into her grandmother's home in Fresno. Mother admitted she could not meet Adam's needs if he were returned to her care, as she did not have stable housing. She felt it was in Adam's best interest to remain in Lisa's care. Mother was still in a relationship with father, who had not contacted the Agency regarding visits or to check on Adam's well-being.

Lisa, who continued to supervise mother's visits, reported that mother had visited Adam regularly, engaged with him during visits by playing with him and watching television, and had taught him to count and recite the alphabet. The juvenile court adopted the Agency's recommendation to terminate mother's services and set a section 366.26 hearing for April 29.

On April 17, the Agency filed a "366.26 WIC Report[.]" which was signed on April 4, in which it recommended the juvenile court identify a KinGap guardianship with Lisa, without dependency, as Adam's permanent plan. The social worker reported that mother and Adam had consistent contact on a weekly basis. During their four hour weekly visits, they both displayed appropriate interaction. Lisa, who supervised the

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<sup>2</sup> Unless otherwise stated, subsequent dates are to the year 2014.

visits, stated mother had not missed a visit and that visits were beneficial to Adam, as he was strongly bonded to mother. At the beginning of visits, Adam ran to mother and did not want to leave when visits ended. Mother and Adam played in the park together and went on walks. Father had not contacted Adam since November 2013.

The adoptions assessment, completed on December 9, 2013 and updated on April 22, recommended that KinGap guardianship was in Adam's best interest because Lisa was not willing to adopt him due to the strong bond he had with mother and because she did not want to take "the place of his mother." Adam had a strong attachment to Lisa, who had been in his life since his birth. It was recommended that mother's visits stay the same after the legal guardianship was ordered, with Lisa having discretion to increase or decrease visits.

On April 28, the juvenile court signed and filed a document entitled "Orders under Welfare and Institutions Code sections 366.24, 366.26, 727.3, 727.31" which stated, in pertinent part, that it had read and considered the social worker's assessment, and ordered that Adam's permanent plan was "legal guardianship with a specific goal of" "dismissal of dependency[,] and that Lisa was appointed legal guardian and letters of guardianship would issue. Filed that same day were (1) a "Consent of Proposed Guardian," which Lisa signed and dated April 1, 2014, in which Lisa consented to serve as guardian of the person of the minor; and (2) "Letters of Guardianship" which Lisa executed on April 1, and the clerk signed on April 28, verifying that Lisa had been appointed guardian.

Also on April 28, the Agency filed a report entitled "Change of Circumstances," along with an updated case plan, in which it changed its recommendation regarding the permanent plan to a planned permanent living arrangement (PPLA) with the goal of placement with a relative. The social worker explained that on April 26, Adam was removed from Lisa's care and placed into a foster home due to several concerns the Agency had about Lisa's care of Adam. Beginning on April 15, Lisa cancelled two consecutive scheduled monthly meetings with the social worker. When the social worker

attempted to call Lisa back after the second cancellation, she did not answer her phone. The social worker discovered through a records check that on February 14, Lisa had reported to the Department of Motor Vehicles a different address than the one approved by the Agency, which she failed to give to the social worker. On April 26, the social worker made an unannounced visit to Lisa's two addresses, and found Adam at the unauthorized address under the supervision of his 16-year-old uncle, as Lisa was not there. Lisa's brother said he owned the home and that Adam lived there "part-time."

The social worker explained the Agency was concerned about Lisa's evasiveness, her failure to return the social worker's phone calls and to allow the Agency to make contact with Adam, and her failure to understand the concern about living in two different homes, one of which was not an approved home where other adults who had not been cleared lived. On April 28, a team decision meeting was held to assess whether it was appropriate to return Adam to Lisa's care; the team decided not to return Adam at that time. The social worker stated the Agency would continue to investigate whether it was safe to return Adam to Lisa.

The section 366.26 hearing was held on April 29. The juvenile court took the findings and orders that were attached to the "366.26 WIC Report" filed on April 17, and amended them by striking both the appointment of Lisa as the legal guardian and the termination of dependency jurisdiction, checking the box that the current placement remained necessary and appropriate, and striking out the order for the permanent plan of legal guardianship and checking the box for a PPLA with a specific goal of adoption. Mother's visits were to be weekly for four hours. A court appointed special advocate (CASA) was appointed. A section 366.3 review hearing was scheduled for September 25.

On May 1, the Agency filed a notice of hearing, which it set for May 6, in which it stated it was asking the court to make the findings and orders attached thereto, which included the prior orders but added orders that Adam remain a dependent and that the

care, custody and control of Adam for suitable placement remain with the Agency, because the juvenile court did not make these specific orders at the April 29 hearing. At the May 6 hearing, the juvenile court adopted the findings and orders submitted with the notice of hearing.

On May 15, Adam was placed in the care of his paternal grandparents. On May 22, the Agency filed a section 388 petition asking the juvenile court to vacate the section 366.3 review hearing and set a section 366.26 hearing to consider adoption by the paternal grandparents. Attached to the petition was a change of circumstance report, which stated that Adam was stable in his placement with the paternal grandparents, with whom he had an ongoing relationship since his birth, and that the paternal grandparents were willing to adopt him. The paternal grandparents told the social worker they and Adam were very attached to each other and they were willing to adopt Adam because they wanted to provide him with the safety and stability he deserved. Also attached to the petition was an updated adoption assessment, dated May 19, in which the adoption social worker opined there would not be significant emotional detriment to Adam if parental rights were terminated and that he was not very attached to his birth parents, and agreed that adoption by the paternal grandparents was in Adam's best interest. The juvenile court scheduled a hearing on the petition.

On June 2, a CASA report was filed; the CASA visited Adam on May 31 in his paternal grandparents' home. The paternal grandfather, who is not Adam's biological grandfather but had been in Adam's life since his birth, took an early retirement so he could care for Adam during the day. The bond between Adam and the grandfather was evident to the CASA when the grandfather walked into the home; Adam instantly went to him to show him a toy he had broken. They began to roughhouse and play; grandfather said they go for daily walks to the park near their home. The paternal grandmother said that mother visited Adam twice a week in the home and would bring Adam's infant sibling with her.

At the June 26 hearing, the juvenile court granted the section 388 petition, vacated the section 366.3 hearing, and vested medical, dental, mental health, and education rights with the paternal grandparents. A section 366.26 hearing was set for October 14.

On October 1, the Agency filed a section 300 petition on behalf of mother and father's four-month-old daughter, Abby P., pursuant to subdivisions (b), (g) and (j). The petition alleged that on September 29, mother was in a Wal-Mart parking lot pushing a stroller and screaming she was hungry; drug paraphernalia was in the stroller next to Abby and mother possessed controlled substances. Father was also present and under the influence of controlled substances. The petition further alleged that the parents were unwilling or unable to provide Abby with a stable home environment due to their transient lifestyle and substance abuse; and Abby was sleeping outdoors and had insect bites on her face. The parents were arrested and jailed for drug offenses and child endangerment. Abby was taken into protective custody and placed with the paternal grandparents.<sup>3</sup>

In the Agency's section 366.26 report dated October 14, the Agency recommended termination of parental rights, a permanent plan of adoption by the paternal grandparents, and termination of visitation. While the paternal grandparents initially were supervising mother's once weekly visits at their home, supervision moved to the Agency at mother's request as she claimed she was having difficulty coordinating visits with the paternal grandparents. Mother visited Adam consistently and missed only one visit. The social worker and child welfare aide who supervised the visits reported that mother was very affectionate, kind and loving towards Adam. She often brought him food and spent her visits playing with blocks, reading and coloring. Mother sometimes

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<sup>3</sup> On October 28, the juvenile court found the allegations of the petition true as amended. At Abby's dispositional hearing on November 20, the juvenile court denied the parents' reunification services and scheduled a section 366.26 hearing. Abby is not a party to this appeal.

struggled with setting parental boundaries, and in redirecting Adam and following through with discipline when Adam misbehaved. Adam sometimes would hit, kick, spit and even lick mother; when that happened, mother would distract him by tickling him or allowing him to play games on her phone. Mother was very lenient and easily dismissed Adam's negative behaviors. Mother brought Abby to these visits; Adam displayed jealous behaviors toward his sister. The paternal grandparents did not object to Adam continuing to visit with mother and Lisa at their discretion after the adoption was finalized.

The paternal grandparents wanted placement of Adam at the time of his October 2012 detention but "backed off" when Lisa was granted placement. According to the paternal grandparents, Lisa often allowed them unauthorized visits and they had been caring for Adam alongside Lisa since his detention; they were unaware she had not asked the Agency for permission for overnight visits. Because Adam would often visit them while in Lisa's care, he had his own room in their home before he was placed with them. The social worker reported that the paternal grandparents had demonstrated their devotion to Adam by being prompt and attentive to his everyday needs, Adam was very comfortable with them, and they were committed to adopting him. The paternal grandparents' daughter was in the process of completing a background check, as she wanted to move in with them; Adam referred to her as his "aunt."

While Adam was too young to make a statement regarding the recommended plan for adoption, the social worker observed that he was very affectionate and loving toward his grandparents; he was "very proud" in the way he talked about his grandparents and shared with the social worker all they did for him; and he often told the social worker to come to his room and look at his train sets or new shoes that his grandparents provided for him. Adam was adjusting well while in the paternal grandparents' care, developing appropriately and doing well in kindergarten. In September 2014, the social worker

referred Adam for a mental health assessment, as he had been displaying hyperactive and angry behaviors.

In a supplemental report, the Agency changed its previous recommendation from termination of mother's visits to a decrease in visits to one two-hour visit per month. An updated adoption assessment was filed, in which the adoption social worker opined there would not be significant emotional detriment to Adam if parental rights were terminated, and that while Adam was attached to mother, it was not a strong attachment. The adoption social worker stated that Adam wanted to be adopted by his paternal grandparents. The social worker acknowledged there had been regular visitation and contact between mother and Adam, but noted that the visits were too long and Adam had some behavior problems following visits, including adjusting to structure at school, as Adam had been repeating at school the "licking behavior" he exhibited toward mother during his visits with her. The adoption social worker agreed with the recommendations to reduce mother's visits and for adoption with the paternal grandparents.

A contested section 366.26 hearing was held on November 20. Father testified he had not visited Adam since Adam was placed with the paternal grandmother. After Adam was removed from mother's care in 2012, father and mother "still had him every day" in violation of the court order. Father felt he had a bond with Adam, loved Adam and was opposed to termination of his parental rights.

Mother testified that before July 25, 2011, she was Adam's primary caretaker. After he was removed from her care and up until April 2014, she visited him four times a week for four hours "each time." Mother confirmed that, in violation of court orders, she and father "had [Adam] the whole entire time he was supposed to be under [Lisa's] care," and between the ages of two and five, she had at least 16 hours of contact with Adam per day. It was only in the last six months, since the paternal grandparents took over Adam's care, that visits changed to twice weekly, two-hour visits.

During her visits with Adam, they went to the park, played t-ball, watched movies, made puzzles and played with blocks and cars. She read with him and taught him most of the alphabet and how to spell his name. When she visited Adam after he was placed with his paternal grandparents, Adam, who called her “Mommy,” would say he loved her and, on almost every visit, would ask “When can I come home?” Adam would talk to mother about school and his sister, Abby. Mother remembered missing only one visit with Adam during the last three and a half years. Mother believed she and Adam had a parent/child bond. She did not want her parental rights terminated and wanted him to be returned home.

Paternal grandmother testified that Adam began living with her on May 15, 2014. Since then, mother consistently visited Adam either twice a week for two-hours each or once a week for four hours. Adam had never told her he did not want to go to a visit. In the past few months, Adam had been disruptive in school; the teacher had some behavior problems with him and he was even having problems at home. On days he did not visit mother, Adam did not have these behaviors or problems and he did not ask for either mother or father. When Adam got hurt, he would ask or cry for either his paternal grandmother or grandfather. Adam recognized mother as his mom. Adam had told her that he wanted mother to move into their house and sleep with him in his room, but had not told her that he wanted to leave.

Both mother and father’s attorneys asked the juvenile court not to terminate parental rights based on the beneficial parent/child relationship exception to adoption. The juvenile court declined to apply the exception to father, as he had not maintained regular contact with Adam. With respect to mother, the juvenile court found there was no question that she had maintained regular contact with Adam and there “seem[ed] to be a relationship between [Adam] and his mother.” The juvenile court found, however, that Adam would benefit more from stability through adoption than a continuance of his

relationship with mother. Accordingly, the juvenile court followed the social worker's recommendation and terminated parental rights.

## DISCUSSION

### *Mother's Appeal*

Mother contends the juvenile court erred when it declined to apply the statutory exception to adoption of section 366.26, subdivision (c)(1)(B)(i), known as the beneficial parental relationship exception. She asserts she met her burden of proving both that she had regular visitation and contact with Adam, and Adam would benefit from continuing his relationship with her, such that it would be detrimental to Adam to terminate her parental rights.

As the parties recognize, there is a split of authority concerning the standard of review in this context. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314–1315 (*Bailey J.*) and *In re K.P.* (2012) 203 Cal.App.4th 614, 621–622 [hybrid combination of substantial evidence and abuse of discretion standards; applying substantial evidence test to determination of the existence of a beneficial parental or sibling relationship and the abuse of discretion test to issue of whether that relationship constitutes a compelling reason for determining that termination would be detrimental to the child]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*) [substantial evidence test—“On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order”]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [abuse of discretion test].)

Our conclusion in this case would be the same under any of these standards because the practical differences between the standards are “not significant,” as they all give deference to the juvenile court's judgment. (See *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) “[E]valuating the factual basis for an exercise of discretion is similar to

analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only “‘if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he [or she] did.’ . . .”” (*Id.* at p. 1351.) Moreover, a substantial evidence challenge to the juvenile court’s failure to find a beneficial parental or sibling relationship cannot succeed unless the undisputed facts establish the existence of those relationships, since such a challenge amounts to a contention that the “undisputed facts lead to only one conclusion.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1529 (*I.W.*); *Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

Once the court determines a child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) To avoid termination of parental rights under the parent-child relationship 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]he 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)(i).)

As the juvenile court found, there is no question that mother satisfied the first prong of the exception by maintaining regular visitation and contact with Adam. The issue then is whether the juvenile court erred in finding she failed to satisfy the second prong, which required mother 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.)

The Court of Appeal in *Autumn H.* defined a beneficial parent/child relationship as 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.” (*Autumn H.*, *supra*, 27 Cal.App.4th 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. 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.” (*Ibid.*)

A parent must show more than frequent and loving contact or pleasant visits for the exception to apply. (*In re C.F.* (2011) 193 Cal.App.4th 549, 555 (*C.F.*); *In re C.B.* (2010) 190 Cal.App.4th 102, 126; *I.W.*, *supra*, 180 Cal.App.4th at p. 1527.) “The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.] Further, to establish the section 366.26, subdivision (c)(1)(B)(i) exception the parent must show the child would suffer detriment if his or her relationship with the parent were terminated.” (*C.F.*, *supra*, at p. 555.)

Here, the juvenile court found that while mother had a relationship with Adam, she did not meet her burden of proving that adoption was not in Adam’s best interest. In so finding, the juvenile court noted the following: Adam, who was five years old, had a “fairly chaotic life” in the last two or three years; there had been a lack of stability in his relationship with his parents for a significant period of Adam’s life; Adam deserved permanency; it did not seem from the evidence presented that the parents had offered, or would offer, stability; there was insufficient evidence from which the court could find that the relationship between Adam and mother was such that Adam would be better off if parental rights were not terminated; Adam would benefit more from the permanency that adoption would offer, which outweighed his relationship with mother; and while the

two had a relationship, it was not the type that benefited Adam to the point it would overcome the benefit of adoption. Essentially, the juvenile court found mother's relationship with Adam did not promote his wellbeing to such a degree that it outweighed the wellbeing he would gain in a permanent home with his paternal grandparents.

Mother asserts the juvenile court erred in so finding, citing to evidence that: (1) she raised Adam for over three years of his life; (2) when she was receiving family maintenance services, she provided him with proper food, clothing and shelter, ensured he was up-to-date on his medical and dental appointments, and Adam was observed to be happy in her care; (3) after Adam was detained in October 2012, she visited him consistently and during visits, she played with him, taught him the alphabet and how to spell his name, and Adam asked when he could come home; (4) she testified the two had a strong bond; and (5) Adam's grandparents did not dispute that she had a bonded relationship with Adam, as Lisa reported Adam was strongly bonded to mother and the paternal grandmother testified that Adam wanted mother to move into the house and reported that she was very affectionate, kind and loving toward Adam.

Mother also asserts her bonded relationship with Adam cannot be disputed because in the December 2013 and April 2014 adoption assessments, the adoption social worker recommended legal guardianship as the permanent plan because of Adam's strong bond with her, and given her ongoing relationship with Adam, the Agency's recommendation that visits continue after termination of parental rights, and Adam's expressed desire for her to continue to be close to him, it could "be discerned" that Adam would be greatly harmed if his relationship with mother ended.

Mother, however, ignores the other evidence that supports the juvenile court's decision. While Adam certainly was bonded to mother, as he appeared to enjoy visits and expressed a desire for mother to live with him and the paternal grandparents, the juvenile court reasonably could find the bond was not a strong one based on the paternal grandmother's testimony that Adam did not ask for mother between visits and he looked

to his paternal grandparents for comfort and parental guidance. Significantly, there was no testimony or other evidence demonstrating a potential for harm if Adam were to lose his relationship with mother. Moreover, Adam was young and his life had been unstable until he was placed with his paternal grandparents. Without termination of parental rights, he faced the prospect of tenuous placements for the bulk of his childhood, which runs counter to his protected interests in permanence and stability.

Mother asserts her case is like *In re Amber M.* (2002) 103 Cal.App.4th 681, in which the appellate court reversed an order forgoing application of the beneficial relationship exception. *Amber M.*, however, hinged on strong evidence (including expert psychological opinion based on a bonding study) that the three dependent children would be harmed by ending their relationship with their mother, as well as the absence of any pertinent evidence supporting the social worker's contrary opinion. (*Amber M.*, at pp. 689-690.) This case does not compel reversal here, as each dependency case "must be viewed in light of its particular facts." (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937.) No case "stand[s] for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*Ibid.*) Mother can point to some similarities between the instant case and *Amber M.*, but unlike *Amber M.*, here there is evidence in the record that the relationship between Adam and mother was not so strong or beneficial that maintaining that relationship promoted Adam's wellbeing more than the permanency of adoption.

On this record, the juvenile court could reasonably find Adam's need for permanence outweighed the benefit he would derive from a continued relationship with mother. It also could find that severing Adam's relationship with mother would not deprive him of a substantial, positive emotional attachment that would greatly harm him. Accordingly, the juvenile court did not err by declining to apply the beneficial relationship exception to the termination of mother's parental rights.

### *Father's Appeal*

Father's sole issue on appeal involves the juvenile court's failure to terminate the guardianship that purportedly was established in Lisa's favor in April 2014. As the record demonstrates, the day before the April 29 section 366.26 hearing, the juvenile court signed and filed an order which stated Adam's permanent plan was legal guardianship with dismissal of dependency, and appointed Lisa as legal guardian. Lisa's consent to the guardianship was also filed the day before the hearing, as were letters of guardianship issued by the court clerk. There is nothing in the record, however, to show that any of these documents were served on anyone. At the April 29 hearing, the juvenile court adopted a different permanent plan of PPLA and issued an order to that effect; dependency was not dismissed and a review hearing was set for September. The guardianship was not mentioned at the April 29 hearing. Thereafter, the juvenile court set a second section 366.26 hearing, after granting the Agency's petition to do so, and in November, ordered adoption as the permanent plan and terminated parental rights. There is nothing in the record to indicate that the juvenile court ever addressed the issue of the April 28 guardianship order or letters of guardianship before selecting either the first plan of PPLA or the second plan of adoption.<sup>4</sup>

Father correctly asserts that a child can have only one permanent plan at a time. (*In re Carrie W.* (2003) 110 Cal.App.4th 746, 760 [in which this court explained that the statutes are clear that there cannot be two long-term permanent plans].) He contends that

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<sup>4</sup> There is also nothing in the record to suggest that the Agency or other parties actually were aware the April 28 orders and letters had been issued and filed, but proceeded anyway. Arguably the Agency was put on notice of the guardianship by statements in the CASA's June 2014 report that Lisa had "obtained legal guardianship" of Adam and that Adam was re-detained in April 2014 when Lisa wanted to give up guardianship; it is not clear where the CASA obtained this information or if any of the parties actually read it.

the guardianship in this case is presumptively valid, and therefore the Agency, or some other party, was required to either file a motion under section 387 or 388 to specifically terminate the guardianship, or to otherwise show that the guardianship was mistakenly or fraudulently established, before the juvenile court could order a new permanent plan. He urges us to vacate the orders terminating parental rights and remand the matter to the juvenile court for “appropriate proceedings as may be determined by law.”

The Agency does not disagree with father’s assertion that there cannot be two permanent plans. Instead, the Agency argues the April 28 documents are void because (1) the section 366.26 hearing had not been held, and therefore certain items marked on the April 28 orders, such as that the court had read and considered the social worker’s assessment prepared for the hearing or that notice had been given as required by law, are incorrect; (2) Adam was no longer in Lisa’s care when the April 28 orders were issued; and (3) at the properly held section 366.26 hearing on April 29, the juvenile court ordered PPLA as the permanent plan. The Agency asks us to exercise our equitable powers to find the April 28 documents void and therefore, of no legal effect.

We decline the Agency’s invitation to declare the April 28 documents void, since it is the juvenile court’s function, especially on this record where it is unclear how the documents came to be signed and filed, to receive evidence and determine the effect of the April 28 documents and the existence and validity of the guardianship. (See, e.g., *In re Nikki R.* (2003) 106 Cal.App.4th 844, 852-853 [appellate court refused to determine whether a social service agency complied with the notice requirements under the Indian Child Welfare Act for the first time on appeal, as it is the juvenile court’s function to receive evidence of the agency’s notice efforts and determine whether they measure up to ICWA standards; “[m]aking the appellate court the trier of fact is not the solution”]; see also *In re I.G.* (2005) 133 Cal.App.4th 1246, 1253.)

Since two permanent plans cannot coexist, we will conditionally reverse the orders terminating parental rights to permit the juvenile court to resolve the validity and effect of

the April 28 documents. If it is ultimately determined that those documents had no effect, the orders terminating parental rights may be reinstated.

**DISPOSITION**

The juvenile court's orders issued on November 20, 2014 terminating the parental rights of Cassandra H. and Shaun P. are conditionally reversed in light of the juvenile court's April 28, 2014 order granting Lisa H. legal guardianship of Adam.

The matter is remanded for further proceedings to allow the juvenile court to determine whether the guardianship exists and what effect, if any, the guardianship order has on the orders terminating parental rights. If the juvenile court vacates the guardianship order, it may reinstate the orders terminating parental rights. If the juvenile court does not vacate the guardianship order, it shall conduct a new section 366.26 hearing.

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GOMES, J.

WE CONCUR:

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HILL, P.J.

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FRANSON, J.