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

In re T.R.T. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.T.,

Defendant and Appellant.

F071232

(Super. Ct. No. 13CEJ300253)

OPINION

APPEAL from an order of the Superior Court of Fresno County. Kimberly J. Nystrom-Geist, Judge.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and David F. Rodriguez, Deputy County Counsel, for Plaintiff and Respondent.

S.T. (mother) appeals from an order terminating her parental rights under Welfare and Institutions Code section 366.26¹ to her daughters, then nine-year-old T.R.T. and eight-year-old T.A.T. (collectively, the girls).² Mother contends the juvenile court erred in declining to apply the exceptions to adoption contained in section 366.26, subdivision (c)(1)(B)(i) and (v), hereafter referred to, respectively, as the “beneficial relationship” and “sibling relationship” exceptions. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Dependency Proceedings in Madera County

These dependency proceedings originated in Madera County in July 2010 due to mother’s substance abuse in the girls’ presence. Dependency jurisdiction was taken over then four-year-old T.R.T. and three-year-old T.A.T. under section 300, subdivision (b) (failure to protect); at disposition, family maintenance services were ordered for mother, with whom the girls were placed.

In April 2011, the girls were removed from mother’s care and placed together with a paternal aunt, as mother failed to remain in contact with the Madera County Department of Social Services (Madera department), had relapsed, and was not complying with her case plan. By the following month, mother again agreed to participate in family maintenance services and was complying with her case plan. Due to her positive progress, the girls were returned to mother, who continued to receive family maintenance services.

In April 2012, the girls were detained and placed together in a foster home after mother was incarcerated following her arrest on various charges. Mother had not been following through with her family maintenance case plan, and the Madera department

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

²The girls’ father is Timothy T. He was denied reunification services at the outset of the case and is not a party to this appeal.

had difficulty maintaining contact with mother as she was moving continually. Reunification services were ordered for mother in June 2012. Mother received weekly visits with the girls while incarcerated; after her release from jail in June 2012, she did not communicate with the social worker or visit the girls until November 2012, when visits resumed.

Mother's reunification services were terminated in January 2013, due to her noncompliance with her case plan, and a permanency planning hearing was set. In March 2013, however, the Madera juvenile court granted the Madera department's section 388 petition to reinstate mother's services and place the girls with her upon her admittance to an inpatient treatment facility. The Madera department recommended the change because it had assessed both the parent-child bond and mother's ability to comply with and complete services, and it determined that six more months of services would be in the girls' best interests. Accordingly, the Madera juvenile court ordered the girls be returned to mother and that she receive family maintenance services.

By July 2013, mother had successfully completed a 90-day inpatient program; she and the girls were living with mother's adult daughter in Fresno. After completing the program, however, mother refused to submit to drug tests for the Madera department.

The Transfer to Fresno County and the Section 387 Petition

In August 2013, the Madera juvenile court ordered continued family maintenance services for mother and that the case be transferred to Fresno County, where mother was living. In September 2013, the Fresno County juvenile court accepted jurisdiction from Madera County.

On October 3, 2013, mother failed to appear for a scheduled meeting at the Fresno County Department of Social Services (Department). Social workers went to the girls' school; the girls told them they were living with mother, their aunt, their aunt's boyfriend, and several other children. The social workers walked with the girls to their apartment, which was found to be unclean, infested with roaches, and without electricity

from the utility company; the apartment's electricity came through an extension cord plugged into the complex's laundry facilities. The food supply was limited. Mother agreed to drug test, but admitted she "would likely test positive for everything," as she smoked marijuana the previous night that her "sister probably laced." Mother tested positive for marijuana, cocaine, and methamphetamines.

The girls were removed from mother and a safety plan was made for them to be placed with their adult half sister U.H. and her boyfriend Ian T. Over the weekend, mother called and harassed U. and Ian, stating she wanted her money from her cash aid card. According to Ian, mother threatened to come and "shoot up their house" if they did not give her the money. Ian was concerned for the girls' safety, as well as for the safety of his own children who were visiting that weekend, so he contacted the Department to have the girls placed in foster care.

The girls were detained and placed into foster care. The Department filed a section 387 supplemental petition which alleged the previous disposition placing the girls with mother had not been effective in protecting them as shown by the condition of the apartment in which they were living, mother's positive drug test, and mother's failure to submit to random drug testing or attend aftercare substance abuse treatment following her release from the inpatient treatment program. The Department recommended termination of mother's family maintenance services and that she not be offered reunification services.

Mother was given reasonable supervised visits with the girls, but as of October 28, 2013, she had failed to contact the Department to arrange for them. The social worker learned mother was visiting the girls when they arrived at school, but was unable to address the issue with mother because the social worker was unable to reach mother by telephone and mother did not respond to the social worker's written request for a meeting. U. was given liberal visits with the girls, who had two overnight weekend visits with U. in October 2013.

At the November 2013 combined jurisdiction/disposition hearing, which mother did not attend, the juvenile court: found the section 387 petition's allegations true; ordered the girls removed from mother's custody; terminated mother's family maintenance services; ordered that mother receive reasonable, supervised monthly visits; and set a section 366.26 hearing for February 18, 2014.³ That same month, the girls were moved to the foster home of the C.'s.

The February 18 Department Report and Hearing

In the report prepared for the section 366.26 hearing, the Department recommended (1) a 120-day continuance to allow time to further assess the most appropriate permanent plan for the girls, (2) the girls' visits with U. be changed to monthly supervised visits; and (3) the parents' educational rights be suspended. The girls had completed mental health assessments; mental health treatment was recommended for both of them, but had not yet started. The social worker spoke with a Madera department social worker, who stated mother was not appropriate with the girls and never stopped displaying evidence of drug use. The Madera social worker also stated the girls "had a history of perping on each other at night," and had to be separated due to their "acting out behaviors."

Mother did not contact the Department to schedule visits until February 4, when she called the social worker following the social worker's visit to the girls' school. The social worker met with mother, explained that the juvenile court had ordered once-a-month supervised visits, and gave mother a copy of the court order. Mother wanted the Department to set up scheduled visits. Mother, however, did not show up for the first scheduled visit on February 10. The social worker visited the girls at their home that day; when the girls were asked when they last saw their parents, the girls answered "'don't

³Subsequent references to dates are to dates in 2014 unless otherwise stated.

know.”” The girls had not asked to see either parent, but the social worker questioned whether they were seeing their parents during their visits with U.

The foster family agency reported in January 2014 that then eight-year-old T.R.T was a “guarded young lady” who did not talk often about her past or her feelings; her emotions came out as tantrums or physical aggression toward T.A.T. The agency noted that T.R.T. had taken care of T.A.T. for many years and seemed to resent T.A.T. because of it. In the past, T.R.T. had pushed and hit T.A.T. to the point of leaving marks, and T.A.T. had to be moved out of the bedroom. T.R.T. had been approved for “wraparound services” and had met her “wrap team”; with these services, T.R.T. would work on appropriate ways to handle her feelings and to use words rather than physical aggression to express herself. T.R.T.’s goal was to develop an appropriate, sisterly relationship with T.A.T., rather than an authoritative one. T.R.T. had started showing signs of self-harming behavior in the form of scratch marks on her arms.

The foster family agency also reported in January 2014 that then six-year-old T.A.T. was “very dependent” on T.R.T. and sought her approval for everything; T.A.T. would protect T.R.T. even when T.R.T. hit her or pushed her down. T.A.T., however, was learning to make her own decisions without worrying about T.R.T.’s disapproval and was realizing some of T.R.T.’s behaviors were inappropriate. T.A.T. had a lot of anxiety about the girls’ well-being; T.A.T. would become inconsolable when T.R.T. got into trouble for fear they would have to move again. The agency stated the girls had been visiting U. for a couple of hours on Saturdays; they also had supervised phone conversations with mother, but these were suspended because mother was speaking about the case with the girls.

According to the social worker, the girls had adjusted well to their placement; they appeared happy and well cared for; the girls said they liked their care providers and felt safe in their home. The social worker believed the girls were generally adoptable, although the social worker recognized it could be difficult to find an adoptive home due

to their behaviors. The C.'s had become attached to the girls, but they were not committed to providing a permanent plan at that time, although they were willing to revisit the issue in the future. The Department was asking for the continuance in the hope that a plan of adoption or guardianship without dependency would take place in the future.

At the February 18 hearing, the juvenile court ordered the girls' visits with U. be changed to supervised visits a minimum of twice per month, suspended the parents' educational rights, appointed the C.'s as holder of educational rights, and continued the section 366.26 hearing to May 20.

The May 20 Department Report and Hearing

The Department filed a section 366.26 report for the May 20 hearing recommending a permanent planned living arrangement (PPLA) be established for the girls, as the C.'s were unwilling to provide a permanent plan of adoption or guardianship. The girls had both begun weekly therapy sessions. The girls had adjusted well to their placement, and called the C.'s "Mom" and "Dad." Mother started visiting the girls on February 26, and had visited monthly at the Department. Mother lived near the girls' school and continued to show up there even though she had been asked not to; the girls had even asked her not to go to the school site.

The foster family agency reported in April that the reduction in U.'s visits with the girls sparked uncertainty and insecurity in T.R.T., who had regressed into old behaviors of being defiant and noncooperative with the C.'s. T.R.T.'s behavior was improving slowly, but the C.'s were still concerned. T.R.T.'s "wrap" facilitator and counselor reported on May 7 that T.R.T. was very emotional and would binge eat on days she visited mother. Mrs. C. reported that over the past few weeks, T.R.T. had been engaging in increased sexualized behavior, including suggestive dancing and gestures, which was directed at T.R.T.'s nine-year-old foster brother and a foster cousin around the same age.

The social worker opined the girls were not adoptable at that time. Although the C.'s had become attached to the girls, they had not yet committed to providing a permanent plan. A "risk adopt" referral had been completed due to the girls' behavioral issues. The social worker stated it would be a challenge to identify an adoptive family due to the girls' ages and behavioral problems, and because they were a sibling group that should remain intact. Accordingly, the Department recommended a PPLA as the most appropriate permanent plan.

At the May 20 hearing, the juvenile court admonished mother not to have unauthorized contact with the girls and told her she was not to contact the girls at school without permission. The section 366.26 hearing was continued to June 24 due to a late-filed report.

The Change in Placement and Continuances of the Section 366.26 Hearing

On June 9, the Department met with the girls' service providers. The girls' therapist recommended they be separated due to the negative effect T.R.T.'s behavior was having on T.A.T. Other services providers, including the "wrap providers," the foster family agency social worker, and the Department, concurred with this recommendation. On June 20, the C.'s informed the Department that while they were willing and able to provide an adoption plan for T.A.T., they were no longer able to provide placement or a PPLA for T.R.T. due to her mood swings and sexualized behavior around their nine-year-old son. The C.'s, however, agreed on sibling visits in the future to keep the girls connected. Based on these events, the Department filed a report requesting a 90-day continuance of the section 366.26 hearing to further assess the girls' permanent plans.

On June 25, a meeting was held at the Department regarding the request to change T.R.T.'s placement. The C.'s reported they were concerned with T.R.T. not being receptive to redirection, her sexualized behaviors toward T.A.T. in which she put her hands in T.A.T.'s pants and grabbed T.A.T.'s "crotch," and her lack of boundaries.

When T.R.T. was around teenage boys, she would pull her pants up so they fit tightly around her buttocks as she walked past them; T.R.T. also would dance provocatively in front of the foster father and other men in the family. The C.'s also were concerned for their son's safety and well-being around T.R.T. A decision was made for T.R.T. to be moved into the home of Mr. and Mrs. H., a retired couple with adult children, by July 3, with sibling visits to occur on a regular basis, and for T.R.T. to continue to receive "wrap services."

On July 9, a supervised visit between mother and the girls was terminated by the supervisor because mother would not stop discussing the case with the girls. The supervisor reported the three were talking about a completely benign topic when mother said things like, "They can't keep us apart forever," and "See what they're trying to do to me?" Mother cried and told the girls she was on the verge of losing them, but she would never give up. It was clear to the supervisor from the girls' expressions that mother's behavior made them uncomfortable, worried, and scared. As mother was being escorted out of the building by security she became hostile toward the supervisor; both of the girls were "very upset" by mother's behavior.

After the visit, T.A.T.'s foster parent told the social worker that T.A.T. said mother yelled at her after T.A.T. told mother to stop talking about the case. The foster parent also reported mother had called T.A.T. on June 26 and July 4. During the June 26 call, mother cried hysterically while talking to T.A.T. and told her that if anyone asked her, she needed to say she wanted to be with mother and T.R.T. T.A.T. became frustrated when mother would not listen to her; T.A.T. gave the phone to the foster parent and said she did not want to talk to mother anymore. According to the social worker, the girls did not really talk on the phone to mother but just listened to her. T.A.T. would get upset with mother when she started talking about the case, and usually walked away from the phone or the foster parent would end the call.

The juvenile court continued the section 366.26 hearing to July 15 due to a late-filed report. At the July 15 hearing, separate counsel was appointed for each of the girls due to the apparent conflict based on the recommendations and the hearing continued to August 12. The Department asked that mother be admonished for discussing the case with the girls during the July 9 visit. The juvenile court warned mother that she risked having the Department stop all her visits unless she could comply with the court order not to discuss the case. The juvenile court ordered that the girls, who were now in separate homes, receive at least weekly visits with each other.

On August 11, mother came to the Department's visitation room while the girls were visiting with U., although mother did not have a scheduled visit. Mother asked T.R.T.'s foster parents for their phone number and badgered them when they refused to give it. Mother called U.'s cell phone and asked to speak with T.R.T. The girls did not know mother was present. At the end of the visit, security walked the foster parents and the girls downstairs; mother was standing downstairs trying to see the girls.

At the August 12 hearing, the Department requested a 120-day continuance so it could complete a sibling relationship assessment. The juvenile court granted the Department's request that educational rights over T.R.T. be vested in her current care providers, the H.'s, and ordered that a sibling relationship assessment be conducted. The court continued the section 366.26 hearing to November 18.

Mother's attorney then asked for more visits with the girls. The social worker objected, citing to mother's history of discussing the case with the girls, having to be escorted out of the building, and her trying to intervene to see the girls the day before. The social worker stated mother was not appropriate to have more visits at that time. The girls' attorneys agreed. T.A.T.'s attorney had read the materials and interviewed T.A.T.; when he talked to T.A.T. about mother's visits, he saw she had a "certain amount of distress," and from the materials, he knew the girls were disturbed when mother showed up at the school without permission. T.A.T.'s attorney asked to maintain the current

schedule of once a month supervised visits. T.R.T.'s attorney also was concerned about mother's discussion of the case. The juvenile court explained to mother that her visits could increase if she demonstrated the ability to have problem-free conversations and visits, and that her behavior would determine whether increased visits would be given to her.

The March 11, 2015, Section 366.26 Hearing

The section 366.26 hearing ultimately was held on March 11, 2015. The sibling attachment assessment was completed in November 2014. The examiner interviewed the girls' care providers, observed the girls during structured and unstructured play, reviewed the reports from the social service agencies, and spoke to the girls' therapist, the social worker, and the "WRAP supervisor". The examiner opined the girls exhibited a sibling relationship, as they demonstrated a comfortable familiarity with each other and appeared pleased to spend time together. The examiner observed an imbalance of emotional support and engagement, with T.A.T. pursuing attention and T.R.T. remaining somewhat aloof and distant, and noted that by the last activity she observed, T.R.T. began to exhibit more parentified behaviors toward T.A.T. The overall interaction quality, however, was positive and mutually enjoyable.

The examiner also opined the girls clearly had a well-established bond and would be emotionally harmed if their relationship were terminated. Both girls indicated during individual interviews that they looked forward to sibling visits and wanted to visit more often. The examiner noted both sets of care providers agreed visitation was important and they would continue to support the sibling relationship. The examiner believed terminating the sibling relationship would likely increase attachment-related symptoms and would not benefit the girls' mental health, while maintaining the relationship would provide them with an ongoing source of emotional support.

Finally, the examiner opined that obtaining permanent placement would "likely promote" the girls' emotional well-being more than keeping them placed together. The

examiner noted the girls had been living separately since June 2014 without signs of emotional detriment, and they appeared to be adjusting in a healthy manner. The examiner, however, thought the sibling relationship was emotionally important to both girls and should be maintained through regular visitation. During individual interviews, the girls reported positive feelings about their current placements. T.A.T. said she was going to be adopted and felt happy in her current home; she also indicated she had changed since T.R.T. left the home, stating that ““when she was here, I was a little bad,”” but she could control herself now. T.R.T. said she changed placements because she ““wanted to leave that house.”” When asked what she missed about living with T.A.T., T.R.T. was unable to answer without further prompts and finally said ““[p]laying with her.””

The care providers reported positive growth and progress since the girls’ separation, and they felt the girls had a healthier relationship not living together. The C.’s said T.A.T. was developing a more individualized sense of self, while the H.’s said T.R.T. was complying more with personal boundaries and focusing more on controlling her own behavior, rather than attempting to control others. The examiner explained a parent-child relationship is essential for healthy emotional development, and a healthy parent-child relationship for each girl outweighed the emotional benefit gained from the siblings living together. While the examiner believed it was essential sibling visitation continue so the girls would have a continued source of support and emotional resiliency, the examiner also stated it was the parent-child relationship that would be the primary vehicle of long-term emotional well-being and sense of safety for each girl.

The Department recommended termination of parental rights and a permanent plan of adoption for each girl with their respective caregivers. Both girls were participating in weekly individual therapy. In December 2014, T.R.T.’s therapist reported she had noticed great improvements in T.R.T.’s mood and sense of self since her placement with the H.’s, but T.R.T. continued to be guarded with her thoughts and feelings, and appeared

to have an increase in symptoms and behaviors before and after visits with mother. The therapist opined T.R.T. would benefit from a safe and secure placement that would provide consistency and routine in order to reduce her symptoms and behaviors, as well as meet her emotional and developmental needs. T.A.T.'s therapist reported T.A.T. continued to make progress in reducing her symptoms of sadness, fear and worry, as well as poor boundaries and withdrawal, and was building a positive relationship with the C.'s. T.A.T., however, continued to be guarded when processing her relationship with mother, and her symptoms of anxiety and worry increased before and after visits with mother.

In a November 2014 report, the social worker stated mother had once-a-month, supervised visits with the girls in August, September, and October. Mother never stopped discussing the case during visits, and the visitation supervisor had to counsel mother on being appropriate. Mother was not able to provide structure for the girls; instead, the girls structured themselves by choosing the games or activities in which they wanted to engage. Mother also was unable to challenge the girls to master any activity, although she praised them on their achievements. While mother watched the girls in their activities, she rarely interacted or played with them. Mother and the girls were affectionate with each other, but the girls would migrate toward each other for most of the visit. Mother told the girls she loved them and was going to get them back; the girls told mother they loved her after mother asked them if they did, and did not verbalize returning to her. Neither girl continuously looked for mother's attention. The H.'s reported T.R.T.'s behaviors would escalate days before and after visits with mother and U.; she would act defiant and would not cooperate with the H.'s. According to the C.'s, T.A.T.'s visits with mother and U. did not appear to faze her one way or another.

The Department believed T.R.T. was "specifically adoptable" and T.A.T. "generally adoptable," and stated both were likely to be adopted. The H.'s stated T.R.T., who had been diagnosed with "ADHD," had become a part of their home and they could

not imagine her leaving. T.R.T. had stated she wanted to remain living with the H.'s and had asked them to adopt her. The C.'s wanted to make T.A.T. a permanent member of their family and T.A.T. wanted the C.'s to adopt her. It appeared to the social worker that both T.R.T. and T.A.T. had developed a significant parent/child relationship with their respective care providers, as they looked to them to meet their needs. The girls had weekly visits with each other and appeared to have adjusted to being placed in separate homes. While they were happy to see each other, they separated easily when visits ended.

The social worker opined it was unlikely mother or father would be able to provide the structure, nurture, challenge and engagement required for the girls to grow and thrive. According to the social worker, mother and father had maintained inconsistent contact with the girls and had not been able to parent the girls, meet their needs, or provide a safe home. Accordingly, the Department recommended termination of parental rights and a permanent plan of adoption.

At the hearing, the Department submitted on its reports, which the juvenile court received into evidence. Mother testified on her own behalf. When child protective services first became involved in the case, T.R.T. was about five or six years old and T.A.T. was three or four. The girls had lived with mother their whole lives, except for the last two years. Mother had visits with the girls since her services were terminated in November 2013. Since February 2014, mother had visited the girls once a month and had not missed a visit.

Mother was asked about her most recent visit in February 2015. Mother said the girls hugged and kissed her when the visit began, and they were affectionate toward her during the visit. They celebrated T.A.T.'s birthday and had a "little party." They had a group hug and prayed together. The three of them worked together to set up cotton candy and snow cone machines; they pretended they were working at a fair. The girls did not misbehave during the visit and mother was able to guide or control the visit. T.R.T. sat

on her lap while they sang “happy birthday” to T.A.T. When the visit ended, the girls were happy, but hated that it was over. The girls call her “mommy.” Mother also visited the girls before Christmas and brought the girls presents. They played with the toys mother brought and took turns singing into a microphone. The girls had a lot of fun. T.A.T. wanted to sit on her lap the whole visit. At every visit, the girls both said they wanted to come home with her.

When the girls lived with mother, she provided structure to their lives by keeping them on a schedule and having open communication. She encouraged them to learn basic skills and disciplined them by giving them time outs. Mother denied the girls demonstrated sexualized behavior while in her care. Mother did not think the limited visitation had affected the girls’ feelings toward her and she felt they loved her “very dearly.”

Mother denied she tried to visit the girls at their school after February 2014, or that she tried to make contact with them while they were having unsupervised visits with U., and testified any reports she had done either thing were false. Since February 2014, mother had about seven or eight telephone conversations with T.A.T., but she did not have any with T.R.T. because T.R.T. was not permitted to call her. During her telephone calls with T.A.T., they would talk about school, gymnastics, and T.A.T.’s birthday—whatever was going on in T.A.T.’s life. Mother let T.A.T. know that she missed her.

Mother did not think she had done anything inappropriate during the visits or telephone conversations she had with the girls since February 2014. Mother denied she ever discussed the case with the girls during visits; she claimed she was admonished for talking about the case when she told the girls, “We go to court soon, we’ll see what is going to happen,” in response to the girls telling her the court date was coming up. Mother also denied the girls had told her to stop talking about the case or they would not have any more visits. Mother believed the social worker was trying to interfere with the

bond she had with the girls. Mother believed it would be really hard on the girls if parental rights were terminated due to the bond they shared with her.

The girls both testified outside the presence of the parents, caretakers, and extended family members. Eight-year-old T.A.T. would not answer questions directly; instead, she either nodded or shook her head in response. When asked whether she wanted to be adopted, T.A.T. shook her head “no,” but she did not answer when asked if she could tell them why she did not want to be adopted. T.A.T. nodded her head “yes” when asked both if she called mother “mommy” and whether she called anyone else “mommy.” T.A.T. remembered her last visit with mother and nodded her head “yes” when asked if she enjoyed the visit and had fun. T.A.T. indicated she wanted to have more visits with mother and it would make her sad not to see mother, but she did not respond when asked why. Someone had talked to T.A.T. about adoption, told her she would be adopted, and asked her if she wanted to be adopted. T.A.T. remembered living with mother and nodded “yes” when asked if mother was nice to her. T.A.T. did not respond when asked if mother was ever mean to her. T.A.T. nodded her head “yes” when asked if she wanted mother to stay in her life, but did not respond when asked how she would feel if mother could not be in her life.

T.R.T. testified someone had talked to her about being adopted and she understood adoption was “[w]here you get a different family.” T.R.T. was with a different family, but did not know if they were going to adopt her. The social worker had asked T.R.T. if she wanted to be adopted, but T.R.T. did not remember what she told the social worker. T.R.T. did not know if she could visit mother if she were adopted; she did not want visits to stop and she enjoyed the visits. T.R.T. testified she had fun at the Christmas visit; they made things and opened presents. If she could visit mother more often, she would visit every day because she misses mother; she would miss mother if she could not see her at all. At this point, the court noted T.R.T. was “clearly experiencing some distress in the courtroom.”

T.R.T. thought it was good for her to see mother, but did not respond when asked why. T.R.T. did not remember the date of the most recent visit with mother or what happened at the visit. Mother was nice when T.R.T. lived with mother, and was a good mom; T.R.T., however, did not respond when asked why. T.R.T. had some fun times when living with mother, but she did not remember any particular “fun time.” T.R.T. thought mother loved her, but did not respond when asked how she felt about mother. T.R.T. had told mother she would like to go home and live with her.

County counsel argued T.A.T. was generally adoptable and T.R.T. was specifically adoptable, and the beneficial relationship exception to adoption did not apply. County counsel did not dispute that mother’s visits had been as regular as the court order allowed, and asserted the real issue was whether mother had a parent/child relationship with the girls and, if so, whether continuing that relationship outweighed the benefits of adoption to the degree the girls would be greatly harmed. County counsel asserted that while the girls wanted to continue to see mother and enjoyed their visits with her, it had not been shown their relationship was a parent/child relationship, that the relationship was a positive attachment, or that terminating parental rights would greatly harm the girls.

T.R.T.’s attorney concurred with county counsel and joined in his argument. T.A.T.’s attorney asserted that while the girls love mother, the security of an adoptive home outweighed the benefit of a continued relationship with her, and argued the girls’ five years of instability needed to end. T.A.T.’s attorney concurred with county counsel and T.R.T.’s attorney, and argued there was no relationship with mother that outweighed the benefit of a permanent plan for T.A.T.

Mother’s attorney asserted the issue was whether there was a beneficial relationship between mother and the girls, and argued mother had shown by her testimony, as well as the girls’ testimony, that a special parent/child bond existed between them. Mother’s attorney further asserted the girls wanted mother in their lives

as there was a deep love between them and asked the court not to sever that relationship as it would harm the girls.

The juvenile court found by clear and convincing evidence the Department established both girls were adoptable, which would lead the court to terminate parental rights unless a statutory exception applied. The court noted that while the evidence received at the hearing had to do with the parent/child relationship, it was obligated to consider whether the sibling relationship exception applied. Based on evidence in the Department's reports and the sibling assessment that it was in the girls' best interests for them to live in separate homes due to the nature of their relationship and the girls' care providers having agreed on sibling visits in the future, the juvenile court found the sibling relationship exception did not apply. Specifically, the juvenile court found it was necessary and appropriate for the girls to be residing in separate homes, termination of parental rights would not negatively impact the girls' relationship, and the current care providers, who were prospective adoptive parents, were committed to maintaining that relationship. The juvenile court further found it would be detrimental for the girls to be residing in one home, and their relationship was best supported under the current arrangement.

With respect to the beneficial relationship exception, the juvenile court found that while mother had expressed great love for the girls and the girls valued that relationship, the Department's evidence on this issue was of greater weight and credibility than mother's evidence. Accordingly, the juvenile court found the exception did not apply and mother had not met her burden to demonstrate the exception by a preponderance of the evidence. The juvenile court terminated parental rights and ordered the girls placed for adoption.

DISCUSSION

Mother contends the juvenile court erred in declining to find termination of parental rights would be detrimental to the girls under either of two exceptions to

adoption—the beneficial relationship and sibling relationship exceptions found in section 366.26, subdivision (c)(1)(B)(i) and (v), respectively. We disagree.

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 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 existence of a beneficial sibling relationship and the abuse of discretion test to issue of whether that relationship constitutes a compelling reason for determining termination would be detrimental to the child]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 [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 [abuse of discretion test].) Mother recognizes the split of authority, but asserts, as does the Department, our review should be for substantial evidence.

Under any of these standards of review, our conclusion in this case would be the same because the practical differences between them are “not significant,” as they all give deference to the juvenile court’s judgment. (See *In re 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.’ ...”” (*Ibid.*) Similarly, a substantial evidence challenge to the juvenile court’s failure to find a beneficial parental relationship or a sibling relationship cannot succeed unless the undisputed facts establish the existence of those relationships, since such a challenge amounts to a contention the “undisputed facts lead to only one conclusion.” (*In re I.W.*

(2009) 180 Cal.App.4th 1517, 1529; see *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

Once a dependency case reaches the permanency planning stage, the statutory presumption is that termination is in an adoptable child's best interests and, therefore, not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343–1344.) It is the parent's burden to show termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.)

We begin with the beneficial relationship exception. To avoid termination of parental rights under this exception, the juvenile court must find “a compelling reason for determining that termination would be detrimental to the child” due to the circumstance that “[t]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).)

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.” (*In re 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; *In re C.B.* (2010) 190 Cal.App.4th 102, 126; *In re 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.”
(*In re C.F., supra*, at p. 555.)

In this case, in declining to apply the beneficial relationship exception, the juvenile court found that while it was clear the girls loved mother and valued their relationship with her, that relationship did not promote their well-being to such a degree it outweighed the well-being they would gain in a permanent home with new adoptive parents. In so finding, the court noted the following: the multiple references in the various reports that mother continued to show up at the girls’ school, even after the social workers and the girls had asked her not to; T.A.T. had increased anxiety and worry, and T.R.T.’s behavior worsened, before and after visits with mother; mother discussed the case with the girls during visits, which made the girls uncomfortable; mother did not listen to the girls when she talked to them on the phone and T.A.T. got upset when mother talked about the case during phone conversations; mother was unable to challenge the girls during visits; the girls did not continuously look to mother for attention during visits; the social worker opined the girls did not have a parent-child relationship with mother that would outweigh the well-being they would gain in a permanent home, and placement with a permanent family would significantly improve the girls’ functioning and offer a stable family environment; mother had been inconsistent with participation in, and inappropriate during, visits; and the girls had been in the dependency system since 2010, with multiple placements and care providers. Based on the Department’s evidence, the juvenile court found the beneficial relationship exception did not apply.

Mother asserts the juvenile court erred in so finding, citing to the girls’ testimony, which she contends shows they were both very emotionally attached to her and provides “compelling evidence of the strength of the bond” they have with her. In addition, she points to the following: the girls were older, ages nine and eight, and had spent the majority of their lives in her care; she was given family maintenance services in April 2012 because of the girls’ close and positive attachment to her; and the girls testified they

had positive visits with her and wanted those visits to continue. Mother asserts this evidence established she and the girls had developed a strong, parent-child bond before October 2013, which was maintained through mother's consistent and positive visits with the girls, and therefore the juvenile court erred in rejecting a finding the girls had a beneficial relationship with her.

Mother, however, ignores the other evidence supporting the juvenile court's decision. Even assuming mother maintained regular visits and contacts with the girls, the record does not evidence the girls had a substantial, positive emotional attachment with mother. To the contrary, during visits and phone conversations, mother did not listen to the girls or engage them, and primarily wanted to talk about the case even though this upset the girls. There was no evidence the girls hesitated to separate from mother at the end of visits, and they each told the social worker they wanted to be adopted by their current care providers. Further, mother offered no evidence the girls would be greatly harmed if their relationship with her were severed and no such evidence can be gleaned from the record. We cannot say on this record that no judge reasonably could have made the decision the court made, or that the undisputed facts lead to only one conclusion.

Our conclusion is not affected by *In re Brandon C.* (1999) 71 Cal.App.4th 1530 or *In re Scott B.* (2010) 188 Cal.App.4th 452, upon which mother relies. In *Brandon C.*, the appellate court affirmed an order of legal guardianship, appropriately applying the deferential substantial evidence standard of review. (*In re Brandon C.*, *supra*, 71 Cal.App.4th at pp. 1532, 1534.) The minors' caretaker, the paternal grandmother, preferred to adopt the minors but was willing to be their legal guardian; she believed it was in the minors' best interest for them to continue a relationship with their parents. (*Id.* at pp. 1532-1533.) The agency, which appealed from the order, presented no evidence the bond between the mother and the minors was not close or that continuing contact would not be beneficial to the minors. (*Id.* at p. 1537.) As the facts and procedural

posture of *Brandon C.* are entirely different from those in the instant case, *Brandon C.* does not support mother's position.

In *Scott B.*, the appellate court reversed an order terminating parental rights where the minor was 11 years old, autistic, emotionally unstable, and failed to understand adoption might mean the end of contact with his mother, to whom he had been closely bonded and with whom he had lived for almost his entire life. (*In re Scott B.*, *supra*, 188 Cal.App.4th at pp. 471-472.) The court found that, given his strong emotional attachment to his mother, his precarious emotional state, and his history of regressing or running away when stressed, the termination of parental rights entailed "a very good chance that he will have a meltdown if his usual frequent visitation with [m]other does not continue"—"the chance of a danger not worth taking." (*Id.* at p. 472.) The court further found that, on these extraordinary facts, "[t]ermination of parental rights is unnecessary given that a legal guardianship will provide Scott with stability in his life." (*Ibid.*) Because these facts in no way resemble the facts of the present case, *Scott B.* does not assist mother.

Turning to the sibling relationship exception, mother contends the juvenile court misunderstood the sibling relationship exception to adoption, as it considered only whether the girls should live together, not whether it would be detrimental to them if future sibling contact ended. She asserts the juvenile court's analysis was flawed because (1) applying the sibling relationship exception would not alter the girls' placements or require they live together, and (2) it was improper for the court to consider whether the girls' care providers would maintain future sibling contact in determining whether adoption would substantially interfere with the sibling relationship.

The sibling relationship exception applies when the juvenile court finds there is a compelling reason for determining termination of parental rights would be detrimental to the child because it would substantially interfere with the child's sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) The juvenile court determines this by evaluating the

nature and extent of the sibling relationship, including whether the child and sibling were raised in the same home, shared significant common experiences, or have existing close and strong bonds. The court must also consider whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption. (*Ibid.*) The purpose of this exception is to preserve long-standing sibling relationships that "serve as anchors for dependent children whose lives are in turmoil." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.)

"The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) The parent must first show: (1) the existence of a significant sibling relationship; (2) that terminating parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) After the parent shows a sibling relationship is so strong its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefits of adoption. (*Id.* at pp. 952–953; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.)

In the present case, the evidence showed that while the girls had lived together for the majority of their lives and shared a bond, their relationship was not a healthy one and it was detrimental for them to live together. As the H.'s observed, the interaction between the girls seemed different from the typical sibling relationship due to the strong dynamic of T.R.T. dominating T.A.T., and T.A.T. submitting to T.R.T.'s control. While the examiner opined the girls would be emotionally harmed if their relationship were to end and maintaining the sibling relationship was important, the girls could only be together for at most four hours at a time before their behaviors began to escalate. Although the visits were a positive experience for T.A.T., if other children were involved, T.R.T. would ignore her. T.R.T. appeared to be unaffected emotionally and would quickly rebound after visits; she rarely mentioned T.A.T. between visits and did not

appear to be negatively impacted by their separation. The girls' care providers understood the importance of the girls' relationship and agreed to support ongoing contact between them. Despite the recommendation for continued visitation, the examiner recognized the parent-child relationship was essential for healthy development, and such a relationship would be the primary vehicle for the girls to experience long-term emotional well-being and a sense of safety.

In finding the sibling relationship exception did not apply, the juvenile court cited the likelihood of ongoing sibling contact after termination. It did not expressly discuss the possible detriment to either girl that would result from severing their relationship; nor did it expressly weigh the benefit of continuing their relationship against the benefit each would gain from being adopted. (See *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951–952.) That the juvenile court relied on postadoptive sibling contact, or failed to expressly discuss detriment or weigh the benefit of adoption, does not negate the juvenile court's determination the sibling relationship exception did not apply. Any excessive focus by the juvenile court on “the mitigating influence” of continuing visitation (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1384) does not undermine the correctness of the ruling since “there is no ‘real doubt’ that the juvenile court would have reached the same decision” in any case. (*In re Steven A.* (1991) 230 Cal.App.3d 349, 353; cf. *In re Noreen G.*, at p. 1384 [in context of Prob. Code, § 1516.5 proceedings, “the [trial court's] finding that termination and adoption by the guardians is in the minors' best interest is not flawed by any mistaken consideration by the trial court of the mitigating influence of the order for continuing visitation” since ruling itself was correct].)⁴

First, the girls' care providers agreed postadoption sibling visitation was important and they were committed to maintaining the sibling relationship; while there is no

⁴The juvenile court's reasoning is not a matter for this court's review. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.) Instead, the proper subject of appellate review is judicial action. (*El Centro Grain Co. v. Bank of Italy, etc.* (1932) 123 Cal.App. 564, 567.)

guarantee of continued visitation, there is a process to formalize such ongoing contact. (See § 366.29; *In re S.B.* (2008) 164 Cal.App.4th 289, 300 [with sibling relationship exception, “the court considers future sibling contact and visitation ... [since,] [u]nlike the parent-child relationship, sibling relationships enjoy legal recognition after termination of parental rights”].)⁵

More importantly, the evidence establishes that while the need for continued contact was important for the girls’ emotional health, it was not more important than their need for a permanent home. The girls could tolerate only minimal contact with each other before regressing to old behaviors. The limited visitation the girls could enjoy certainly does not outweigh the benefit the girls would receive through adoption. Through adoption, the care providers will be able to provide the stability, nurturing and guidance each girl desperately needs and that will allow them to continue to thrive. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951–952.)

Based on all of the evidence, the juvenile court reasonably could conclude that, to the extent adoption would interfere with the girls’ relationship, “the benefit of continuing th[at] relationship[] ... was outweighed by the benefit of adoption and, therefore, the sibling relationship exception to termination of parental rights did not apply.” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 131.)

In sum, the court did not err in concluding mother failed to satisfy her burden of establishing applicability of the sibling relationship exception to termination of parental rights. (See § 366.26, subd. (c)(1)(B)(v).)

⁵“The determination that the sibling relationship exception is inapplicable does not necessarily prevent postadoption sibling contact (See Fam. Code, § 8616.5; Welf. & Inst. Code, § 366.26, subd. (a); see also ... 366.3, subd. (g)(7) [report for section 366.3 hearing after termination of parental rights must include ‘[w]hether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29’], § 366.29, subd. (a) [“With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact.”].)” (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 131, fn. 8.)

DISPOSITION

The juvenile court's orders terminating parental rights are affirmed.

PEÑA, J.

WE CONCUR:

HILL, P.J.

LEVY, J.