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

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

KINGS COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

MICHAEL T.,

Defendant and Appellant.

F073169

(Super. Ct. No. 14JD0182)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Kings County. Jennifer Lee Giuliani, Judge.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Colleen Carlson, County Counsel, and Risé A. Donlon, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Detjen, J. and Smith, J.

## **INTRODUCTION**

Appellant Michael T.'s parental rights to Chance T. were terminated and a permanent plan of adoption ordered at the Welfare and Institutions Code<sup>1</sup> section 366.26 hearing. Michael contends the beneficial relationship exception should apply and that termination of parental rights was detrimental to Chance. We disagree and affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

On December 31, 2014, a section 300 petition was filed on behalf of Chance, who had been born the day before. The petition alleged that Chance was at risk due to his mother's use of marijuana, methamphetamine, and ecstasy. Mother tested positive for marijuana at Chance's birth and had tested positive for marijuana and methamphetamine a few days prior to giving birth. It also was alleged that mother had mental health issues that placed Chance at risk, in that mother had suicidal ideation and had a self-inflicted neck wound, which led to a section 5150 hold on mother in February 2014, and mother exhibiting erratic behavior in December 2014.

At the January 5, 2015 detention hearing, Chance was removed from the care of mother and services were ordered provided to mother and Michael, the presumed father of Chance. At the February 9, 2015, jurisdiction hearing, all parties submitted the matter and the allegations of the petition were found true. The matter was set for a contested disposition hearing.

The contested disposition hearing was held on March 4, 2015. The detention report filed January 2, 2015; jurisdiction-disposition report, filed February 6, 2015; and the protective custody warrant issued December 31, 2014, were admitted into evidence. Both mother and father withdrew their requests for a contested hearing and submitted the matter. The juvenile court denied reunification services to mother on the grounds that

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<sup>1</sup> References to code sections are to the Welfare and Institutions Code unless otherwise specified.

mother's parental rights to Chance's half-siblings previously had been severed and mother failed to address the problems that led to her loss of parental rights. Reunification services were ordered provided to father for six months.

The status review report for the section 366.21, subdivision (e) review hearing was filed August 6, 2015. The report noted that father "has made no progress in his Court ordered treatment services." The recommendation was to terminate reunification services and schedule a section 366.26 permanent plan hearing.

In support of its recommendation, the review report noted that genetic testing had been conducted on father and Chance; father was not the biological father of Chance. Father was advised on June 29, 2015, that in order to obtain custody and care of Chance, father had to comply with the case plan. The review report also noted that father had a lengthy criminal history, including multiple convictions for possession of controlled substances and driving under the influence; conspiracy to manufacture controlled substances; manufacturing of controlled substances; battery; and possession of drug paraphernalia. Father currently was on felony probation, but was not in compliance with the terms of probation.

Father's case plan required him to participate in parenting classes, complete an alcohol and other drugs assessment and follow the recommendation of the therapist, submit to random drug testing, and attend at least two AA/NA meetings per week. Father was provided with monthly bus passes to complete his services, but father refused to use public transportation.

Father refused to participate in the parenting class, asserting he was a good parent. Father also stated he could not attend classes because he worked at night and slept during the day. Classes were offered that would accommodate father's schedule, but he still did not participate. Father continued to have contact with mother and was advocating for mother to have visits with Chance.

Father completed the alcohol and drug assessment, but failed to follow through on the therapist's recommendation for services. He failed to submit to drug testing when asked. He also failed to attend any AA/NA meetings.

Father was provided weekly supervised visits with Chance, which the social worker described as "appropriate and positive." It was noted that father sometimes "would dose off during visits" with Chance, and the time of the visits was modified.

When notified that termination of reunification services would be recommended if father failed to comply with his case plan, father responded by leaving a message for the social worker. Father's message stated:

"So what I haven't done your stupid fucken programs! I don't need your programs! I'm good enough parent as I am. You're [sic] parenting classes and stuff aint [sic] going to do nothing for me. I will ask for more time. I will and should be granted more time due to I am a father, I do have rights, and they and you guys are violating all of them.... This is bull shit!"

The report went on to state that father had been given multiple opportunities to participate in court-ordered services, but had failed to participate and had not made progress on his case plan. He failed to participate in parenting classes, did not follow the recommendations of the therapist after the drug and alcohol assessment, failed on nine separate occasions to drug test when asked, and did not participate in AA/NA meetings.

The recommendation was that reunification services be terminated. An adoption assessment had been done on Chance.

At the contested hearing, father testified that he had not participated in court-ordered services. He had drug tested one time for the probation department; that test was positive for methamphetamine.

The juvenile court found that father actively resisted services and had failed to complete court-ordered services and the case plan. The juvenile court terminated reunification services and scheduled a section 366.26 hearing.

The section 366.26 hearing was held on January 12, 2016. The social study prepared for the hearing noted that Chance was a healthy one year old with no identified medical issues or developmental delays. Chance's current foster family was committed to adopting the child if parental rights were terminated. The prospective adoptive parents had no criminal or CPS history; had been married 11 years; had two young children of their own; and the financial ability to care for and raise Chance.

A contested hearing on the selection and implementation of a plan of adoption was held on January 27, 2016. All parties stipulated Chance was adoptable. County Counsel argued that Chance had never resided with father and although supervised visitation went well, there was not "the sort of bond" between Chance and father that would "outweigh the benefit of a permanent home and an adoptive family."

The juvenile court found Chance was adoptable and that the evidence did not support a finding that the beneficial relationship exception was applicable. Parental rights were terminated and Chance was freed for adoption.

Father filed a notice of appeal on February 1, 2016.

### **DISCUSSION**

Father challenges the juvenile court's finding that the beneficial relationship exception to termination of parental rights did not apply to him.

#### ***Legal Principles***

Once the juvenile court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) An exception to the adoption preference applies if termination of parental rights would be detrimental to the child because "the 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 issue is subject to a sufficiency of the evidence standard of review. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) In reviewing the sufficiency of the evidence, this court presumes “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.” (*Ibid.*)

### ***Analysis***

It was uncontested that father maintained regular, supervised, visitation with Chance during the dependency. Assuming *arguendo* this satisfies the first prong of the beneficial relationship exception, that the parent has maintained regular visitation and contact, the evidence is wholly lacking to establish the second prong, namely that the child would benefit from continuing the relationship.

When reunification efforts cease, the interest of the child in permanence and stability takes priority and adoption is the preferred permanent plan. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1344.) To establish that a child would benefit from a continuing relationship with the parent, the parent must demonstrate that continuing the relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.) The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between the parent and child. (*Ibid.*) No such showing has, or can be, made here.

Although the supervised visits between father and Chance were pleasant, a parent must show more than pleasant visits to establish the parental role and beneficial relationship exception. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must also establish detriment to the child from terminating parental rights. (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) No detriment to Chance has been established.

Chance was removed from parental custody and control at birth; father never occupied a parental role in Chance’s life; Chance never resided with him; and he is not

Chance's biological parent. Chance was only one year old at the time of termination of parental rights and had spent his time since birth in foster care. His current foster parents, who had been in contact with Chance since his birth, wanted to adopt him and provide a permanent, stable home. There was no bonding study or any other evidence to support a finding that Chance would suffer detriment if father's parental rights were terminated. (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 557.)

Father has failed to meet his burden of proof that the beneficial relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i) applied and that Chance would suffer detriment that outweighed the child's need for permanence and stability. (*In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1345.)

#### **DISPOSITION**

The January 27, 2016 order terminating parental rights and ordering a permanent plan of adoption for Chance is affirmed.