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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re TIFFANY S., Person Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

JAN B.,

Defendant and Appellant.

G045710

(Super. Ct. No. DP014107)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Barbara Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie  
Torrez, Deputy County Counsels, for Plaintiff and Respondent.

\* \* \*

Defendant Jan B. (mother) appeals from an order terminating her parental rights over (now) 15-year-old Tiffany S., and placing her for adoption. She contends the court wrongly relied upon the adoptive mother's unenforceable promise of visitation when it declined to apply the "parental relationship" exception to adoption. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).<sup>1</sup> But the record does not support mother's contention. Although the court referred to the promise, its decision was firmly rooted in the absence of a statutory basis for the exception. We affirm.

## FACTS

### *The Detention, Jurisdictional, and Disposition Hearings*

Tiffany was born in December 1996. Child abuse reports alleging general neglect and emotional abuse were filed in June 1998 and September 1999, respectively. But neither report was substantiated.

Child abuse reports were substantiated in May 2003 and September 2005. The 2003 report alleged mother and father were engaged in domestic violence, leading to mother's arrest. The home was "filthy" and "unacceptable." A teacher reported Tiffany "frequently [came] to school unkempt and smelling of smoke." Mother stated "she was 'depressed because she has migraines and fibromyalgia.'" The 2005 report alleged "mother continues to have an addiction to prescription medication, and the home was found to be cluttered and dirty, although with no observable signs of hazards."

Two separate child abuse reports were substantiated in September 2006. The first report alleged "general neglect." Mother was home entertaining "men who were arrested for possession of marijuana." In addition, "[t]here was trash and laundry all piled all over the house covering the entire floor area and making it impossible to walk

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

in some areas. There are dirty dishes in the sink and around the kitchen are that have mold growing in [them]. [T]here is a stench coming from one of the rooms . . . .” The second report alleged ““mother . . . left the child with neighbor’s [sic] while she went to the hospital and [did not] return[.]”” It further alleged ““[m]other goes to various hospital emergency rooms using false names and tr[ies] to get them to prescribe medications for her.””

That month, Orange County Social Services Agency (SSA) took Tiffany into protective custody placed her with her now-deceased father’s first wife. Tiffany had known the woman since she was four years old, and over the years had grown close to the woman’s daughter, Tiffany’s half-sister. Tiffany usually called the woman by her first name or “stepmom,” but called her “Mom” around others. Tiffany described the woman as “basically . . . my stepmom in a backwards way, I guess.”

While Tiffany lived with stepmother, mother had a psychological evaluation in 2007. A psychologist found mother suffers from bipolar and substance abuse disorders that “interfere with her parenting capacity.” Mother ““has difficulty managing her own life,”” raising “significant doubts about her ability to care for her ten-year old daughter.” Mother “has consistently put her own needs in front of those of her child.”

Nonetheless, mother completed her case plan. Tiffany returned to mother’s home in January 2008.

Police arrived at mother’s apartment in August 2010, responding to mother’s report that Tiffany had been abused, bitten by a dog, and scratched by a cat. The apartment was “cluttered,” with “dirty clothing scattered on the floor” and “dog feces on the carpet.” Mother told the police she was recently released from a “72 hour mental health hold,” but the friend who had watched Tiffany had “held her [for] ransom.” Mother was “pacing,” rambling, “looked exhausted,” and claimed she “had not slept for days.” Tiffany explained she had not been attacked or held hostage.

Mother was involuntarily hospitalized again, Tiffany was placed with stepmother, and SSA filed a dependency petition. (§ 300, subds. (b) [failure to protect], (g) [failure to provide support].) The court detained Tiffany and vested custody with SSA, with visitation for mother. SSA placed Tiffany with stepmother.

A social worker came to interview Tiffany at stepmother's home. Tiffany stated she had been frequently absent from school because she "had issues with my mom . . . ." Mother had a live-in boyfriend who was a "total drug addict . . . ." Mother would "leave the home at night," but "return in the morning . . . ." Mother recently had "mental problems" that made her "totally different." Tiffany was "ninety percent sure" her mother uses methamphetamine, and thought the "doctors give [mother] too much medication." Tiffany also told social worker "she wants to return to her mother once her mother is more stable" because "when she (Tiffany) is there her mom tries harder." Tiffany stated: "I'm able to . . . what's the word . . . support her" and she (Mom) does better."

Mother was released from the hospital, but did not ask about Tiffany or try to visit her. SSA was unable to reach her by telephone.

A social worker visited mother in late-September 2010. The letters "CPS" were written in red paint on the railing in front of her house. The words "vilation [*sic*]," "big tit," "please help," and "call taxi" were written in pink paint on a car in front of the house. Mother answered the door — she was "disheveled," "dirty," and had lipstick smeared on her face. She twirled a knife, demanding to know, "Where is my daughter?" and "Who's fucking her?" The social worker asked mother about her missing a scheduled interview. Mother claimed she "was there," but her "bitch whore" lawyer "was fucking someone else." Mother then turned up the stereo so loudly the social worker had to leave.

SSA arranged for mother to have monitored visitation with Tiffany. But mother had been involuntarily hospitalized again. Tiffany told a social worker she did

“not want to have contact with her mother, as her mother has changed her phone number and is not reachable, nor has her mother contacted [her].” Tiffany was “open to adoption by her stepmother.”

A social worker called mother at a hospital in late-October 2010. Mother complained profanely and agitatedly about Tiffany being placed with stepmother. Mother reported she was being raped at the hospital, and was raped the day the social worker visited her house. She asked the social worker his name, but stated she would just call him “Patrick Swayze.”

The court conducted a jurisdictional hearing in November 2010, finding the petition’s allegations to be true. It ordered two mental health evaluations of mother, and continued the matter for a dispositional hearing.

A social worker later summarized mother’s mental health evaluations. Mother is “suffering from a mental disorder which has interfered substantially with her parenting capacity.” Moreover, “*[e]ven without abusing the medications she is taking, the type and kind of medication that [mother] takes for her medical condition is not likely to lend itself to her adequately parenting [Tiffany].*” Mother’s “propensity to neglect Tiffany is . . . high,” and “*the likelihood of [Tiffany] being neglected by [mother] is very great if [Tiffany] is returned home.*” “In fact,” one psychologist noted, Tiffany “would become the caretaker for the mother [if] she is returned” to mother. Tiffany told the psychologist “she would like to remain with her stepmother until she finished high school, but she would like to see her mother on a regular basis,” yet “she did not know if she wanted to visit her mother at the current time”

Meanwhile, Tiffany had been using her cell phone to talk to mother. Tiffany would “come to [stepmother] in tears after speaking with her mother.” Tiffany told her stepmother that mother would “give her a hard time,” and tell her “you’re thinking about yourself, you’re not thinking about me anymore.”

At the disposition hearing in March 2011, the court declared Tiffany a dependent of the court. It vested custody with SSA, found reunification serves were not needed, and set a hearing to select and implement a permanent plan. (See § 366.26 (.26 hearing).) It ordered two monitored telephone calls per month.

### *The .26 Hearing*

In late March 2011, Tiffany told a social worker she now wanted to visit mother because mother offered to pay her \$25 per visit. Tiffany wanted the visits to be overnights “so she could go spend the night with friends.” The court authorized one visit per month, which SSA arranged to start on July 1.

Two days before the scheduled visitation, Tiffany “refused the visit with the mother and stated ‘I am not ready’ to see her. Tiffany reported she had a friend over and would rather spend time with her.” Tiffany told the social worker “her desire at this time was to be adopted by [stepmother].” Two weeks later, “Tiffany reported she did not want to see her mother yet. She reported she would like to wait a little longer as she had recently sent a message to her mother via her Facebook account indicating she wanted to be adopted by [stepmother] and [it] was better for her to stay with [stepmother].” After another two weeks, Tiffany was still not ready to see mother. Tiffany “wanted ‘all this to be over’ and hoped that her mother would not make it difficult for her to be adopted.”

The court conducted the .26 hearing in August 2011. Tiffany was the only witness. Tiffany agreed she had told a social worker mother was doing better and “could care for [her] if [she was] there.” She had also told a social worker she wanted to increase visitation and spend the night. Tiffany missed mother “a lot of times” and wanted to “talk to her because [they] had a really close relationship and [Tiffany] would tell [mother] everything.” But Tiffany explained: “somehow things got in the way that like made me mad and made me upset so I didn’t like want to talk to her or like see her, and I stopped talking to her for a while.”

Tiffany was not sure whether she would feel safe living with mother. She stated: “I haven’t seen her in a year so I don’t know how she is right now and I haven’t talked to her in a while.” The last time she spoke with mother was June 2011. She enjoyed confiding in mother, but did not enjoy talking about being adopted: “My mom didn’t know that I wanted to be adopted so she was asking me what I wanted and I really couldn’t answer her. So it was frightening . . . . And then she asked me what I wanted to do and I said I’m not sure.” Later, Tiffany “e-mailed [mother] and told her what [she] wanted to do, and [she] said that [she] wanted to be adopted.” Mother never responded.

When asked if she knew “what it means to be adopted,” Tiffany answered: “It means my mom won’t have parental rights and I can’t go back to her.” Tiffany understood terminating mother’s parental rights would mean mother “can’t make decisions for [her],” which is what she wanted. Tiffany agreed she wanted to “stay with” stepmother and not “go back to” mother, but she wanted to visit mother when she was “ready.”

Tiffany had some difficulty answering mother’s counsel’s questions about Tiffany’s right to see mother if she was adopted. “Q: Would you still want to be adopted if there’s a chance that you would never get to see your mom again? [¶] A: If she’s not fully clean, I don’t want to go back. [¶] Q: Would you still want to be adopted if there’s a chance that you would never get to see your mom again? [¶] A: No. Are you saying like if I never see her again if I want to be adopted? [¶] Q: If there’s a chance you would never get to see her again, would you still want to be adopted? [¶] A: I don’t think so.” “Q: If there’s a chance that you would never get to talk to her on the phone again, if you want to be adopted? [¶] A: Uhm, I would — I would leave it as — I don’t really know how to explain the answer. [¶] Q: Let me ask you this way: Would you still want to be adopted if you can get to stay with your stepmom and only call your mom when you’re ready? A: Yes. Would I be able to see her? Q: Whenever you’re ready, you could see her at your own term. If you were given that choice, would you still —

without being adopted, would you want to be adopted? A: I'm really confused with this question. [¶] The Court: So is the court."

Tiffany tried to clarify. "If they told me I can't see [mother] or talk to her once I'm adopted, then I would tell them that I don't want to be adopted. But if they told me I can see her and talk to her at a certain time once everything is totally settled and when I'm ready, that I can see and talk to her. But if they didn't say that and they said I couldn't see my mom until I'm 18 or couldn't talk to her, then I wouldn't. Because I talked to my stepmom about i[t] — I said, 'If you want to adopt me, you have to let me see my mom,' and she said okay. I will let you. I promise I'll let you. You just can't sleep over unless she is fully sober."

Mother's counsel asked Tiffany how she would feel if stepmother would not let her see mother. Tiffany answered: "When she tells me I can see my mom, I'm pretty sure she would keep that promise. My stepmom has never broken a promise with me." Tiffany summed up: "I said if I can't see [mother] and can't talk to her and the case was closed, then I wouldn't want to be adopted."

SSA's counsel asked Tiffany whether she was "sure" she wanted to be adopted — Tiffany answered "yeah." When asked why, she explained: "Because I don't think my mom is going to get clean. And if she doesn't get clean, what if I get taken away again? I'm like I can't always just like go back and forth and you just use my stepmom as like a second person to just go to like." Counsel asked: "So you are committed to being adopted?" Tiffany answered, "Yeah."

Tiffany later testified she wanted to be adopted because she wanted this case closed and needed help in high school, which she could get living with stepmother. She agreed she was "better cared for where [she is] now than when [she was] with [her] mother."

The court terminated mother's parental rights and placed Tiffany for adoption. It found no "overwhelming reason why Tiffany could not be adopted.

Certainly she is adoptable. There is somebody who wants to adopt her. Tiffany wants to be adopted.” It found Tiffany “understood adoption, and her attorney who represents her interests says that [Tiffany] is unwavering in her commitment to be adopted.”

The court discussed whether Tiffany would be able to maintain contact with mother. It stated: “Tiffany clearly wants to continue a relationship with her mother, but unlike her mother, Tiffany says her stepmother has never broken a promise to her, and her stepmother has promised her that she can continue to have contact with her mother, that she can see her mother.” The court stated it “does believe that [stepmother] will honor Tiffany’s wishes. It does appear that [stepmother] is very concerned about Tiffany and has done many things that are in Tiffany’s best interests, and very importantly has provided Tiffany . . . with the stability and consistency and maturity of a parent.” It told mother: “I do believe that your daughter will continue to have a relationship with you, and I do believe that her caretaker will allow that relationship.”

## DISCUSSION

“At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*)) “Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to’” some specified statutory exception. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*); accord § 366.26, subd. (c)(1)(B).)

“Section 366.26 provides an exception to the general legislative preference for adoption when ‘[t]he court finds a compelling reason for determining that termination would be detrimental to the child’ [citation] because ‘[t]he parents have maintained

regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621; accord § 366.26, subd.

(c)(1)(B)(i).) The exception calls for a two-step analysis.

To invoke the parental relationship exception, first the parent must show regular contact has created a beneficial parental relationship. (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) We review the court’s finding on whether a beneficial parental relationship exists for substantial evidence.” (*Ibid.*) Thus, ““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 C.F.* (2011) 193 Cal.App.4th 549, 553 (*C.F.*).

““The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’ [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship.” (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.)

“No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) “Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly

found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.'" (*Ibid.*)

Second, the parent must show the parental relationship is sufficiently compelling to forego terminating parental rights. To do so, it must "'promote[] 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 other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.'" (*C.F., supra*, 193 Cal.App.4th at p. 555.) "Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

The order easily withstands scrutiny under this analysis.

First, substantial evidence supports an implied finding mother lacked a beneficial parental relationship with Tiffany. To be sure, Tiffany was in mother's custody much of her young life. (See *Bailey J., supra*, 189 Cal.App.4th at p. 1315 [factors include child's age and time spent with parent].) Tiffany was in mother's custody from December 1996 to September 2006, and again from January 2008 to August 2010.

But it is not clear their relationship was parental, let alone beneficial to Tiffany. (See *Bailey J., supra*, 189 Cal.App.4th at p. 1316 [parent must provide "'physical care, nourishment, comfort, affection and stimulation'"] see also *K.P., supra*, 203 Cal.App.4th at p. 621 ["'the parents must show that they occupy "a parental role" in the child's life'"].) All three mental health evaluators doubted mother could adequately

parent Tiffany. One noted mother “consistently put her own needs in front of those of her child.” The others warned of the “high” “propensity” and “*very great*” “*likelihood*” that mother would continue to neglect Tiffany.

If anything, Tiffany was the parent in this relationship. One psychologist was convinced Tiffany “would become the caretaker for the mother [if] she is returned” to mother. Mother and Tiffany seemed to understand this, too. Mother scolded Tiffany for “thinking about [her]self” and “not thinking about [mother] anymore.” Tiffany felt that her presence helped mother “tr[y] harder.” Tiffany told a social worker: “I’m able to . . . what’s the word . . . support her’ and she (Mom) does better.”

Nor is it clear mother “maintained regular visitation and contact” with Tiffany in a meaningful sense. (§ 366.26, subd. (c)(1)(B)(i).) Mother did not visit Tiffany after she was placed with stepmother in August 2010, a year before the .26 hearing. Mother and Tiffany did speak over the telephone, but not regularly — sometimes mother could not be reached, and sometimes Tiffany did not want to talk to her. At least once, Tiffany enjoyed confiding in mother. But other conversations made Tiffany cry or were “frightening.” Mother would use the opportunities to give Tiffany “a hard time” and make her feel guilty.

“Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception to adoption.” (*C.F., supra*, 193 Cal.App.4th at p. 554 [three visits in three months, followed by weekly and thrice-weekly visits].) And if even “frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship” (*Bailey J., supra*, 189 Cal.App.4th at pp. 1315-1316), it is hard to give much credit to mother’s occasional and often grueling telephone calls with Tiffany.

Second, even if a beneficial parental relationship did exist, the court did not abuse its discretion by concluding it was not compelling. (See *Bailey J., supra*, 189 Cal.App.4th at p. 1315.) Mother abjectly failed to show her relationship with Tiffany promoted Tiffany’s well-being “to such a degree as to outweigh” “the security and the

sense of belonging” Tiffany would gain from adoption. (*C.F., supra*, 193 Cal.App.4th at p. 555.) Where is the “great[] harm[]” to Tiffany? (*Ibid.*) Tiffany thrived with her stepmother. She did better in school, which was a major concern for her, and enjoyed dance lessons and close relationships with stepmother’s family. “[I]t is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*K.P., supra*, 203 Cal.App.4th at p. 621.) This is not such a case.

And Tiffany wanted to be adopted. “The testimony of a single witness is sufficient to uphold a judgment even if it is . . . inconsistent . . . .” (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.) “It is for the trier of fact to consider internal inconsistencies in testimony, to resolve them if this is possible, and to determine what weight should be given to such testimony.” (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 878.) The court could easily reconcile Tiffany’s testimony. She wanted mother to get clean so they could live together, but because that was unlikely, she wanted to be adopted and have contact with mother when they both were ready.

Mother’s primary contention is that the court wrongly terminated parental rights by relying on stepmother’s “unenforceable promise of future visitation . . . .” (*In re S.B.* (2008) 164 Cal.App.4th 289, 300.) “[I]f a juvenile court determines that a parent has ‘maintained regular visitation and contact’ [citation], that there is a ‘substantial, positive emotional attachment’ between child and parent benefitting the child [citation], and that the benefit from continuing that parent-child relationship in a tenuous placement ‘promotes the well-being of the child to such a degree as to outweigh’ the benefit that child would gain from the stability and permanency of adoption [citation], then the parent-child relationship exception is established. In those circumstances, the court cannot nevertheless terminate parental rights based upon an unenforceable expectation that the prospective adoptive parents will voluntarily permit future contact between the

child and a biological parent, even if substantial evidence supports that expectation.” (*In re C.B.* (2010) 190 Cal.App.4th 102, 128.)

But the court made no such error. It did *not* find a beneficial parental relationship existed, then refuse to apply the exception based on an unenforceable promise of visitation. Instead, the court found the exception did not apply. To be sure, the court believed stepmother would allow Tiffany to visit mother at an appropriate time. Its comments appear hopeful more than anything else — an attempt to soften the blow of terminating mother’s parental rights with the faith that her relationship with Tiffany may not end altogether. But the record makes clear the court’s decision to terminate parental rights did not depend upon its optimistic outlook.

#### DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.