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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.C. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

G047133

(Super. Ct. Nos. DP020378,
DP020379, DP020380)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Cheryl L. Leininger, Judge. Affirmed.

Rosemary Bishop, under appointment by the Court of Appeal, for
Defendant and Appellant.

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

A.G. (mother) appeals from an order terminating her parental rights over L.C. and A.C. and placing them for adoption. She contends the court wrongly denied her motion for a bonding study, which may have supported application of the “beneficial parental relationship” exception to adoption. (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).¹ But any error was harmless. The record abundantly shows mother did not occupy a parental role in the children’s lives that was so compelling it warranted foregoing adoption. No reasonable probability exists mother would have successfully established the exception had the court ordered the bonding study. We affirm.

FACTS

Mother has three children: D.C. (born 1997), L.C. (born 2000), and A.C. (born 2002). Orange County Social Services Agency (SSA) took the children into protective custody in September 2010. According to the dependency petition, D.C. reported being sexually abused by mother’s boyfriend, Carlos. The petition further alleged D.C.’s stepfather had raped her and beat mother when they lived in North Carolina. Mother submitted to the petition.

The court found mother failed to protect the children from sexual abuse and domestic violence. (§ 300, subds. (b), (d).) It vested custody with SSA, awarding supervised visitation to mother. The court also awarded reunification services to mother. Her case plan required her to “participate in a . . . counseling program to address the issues of sexual abuse of [her] child” and a domestic violence prevention plan.

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All further statutory references are to the Welfare and Institutions Code.

The Reunification Period

By the six-month review hearing, mother was making “MINIMAL” progress on her case plan. She failed to attend any domestic violence prevention program. In therapy, mother was “not yet able to understand and process the issues that have made her children dependents of the Court as she continues to minimize or deny the issues.” She continued to live with D.C.’s abuser, Carlos, until a social worker made an unannounced home visit. Mother once brought Carlos to visit with the children — D.C. told the monitors “she couldn’t believe that her mom would still be with that guy especially after what [he] did to her ([D.C.]).” When confronted with her continuing relationship with Carlos, mother would get “shaken up,” “guarded and defensive,” and demand to keep her relationships private. Mother began drinking liquor, but refused to take medication prescribed for depression. The court ordered mother to comply with a case plan that required her to submit to drug and alcohol testing and take her prescribed medication.

Mother continued making “MINIMAL” progress on her case plan. She still had contact with Carlos, denying he was ever abusive and asserting “she did nothing wrong by maintaining a relationship with [him] because she never brought the children around him.” She also claimed Carlos was stalking her, but refused to seek a restraining order against him. Mother was still not taking her prescribed medication. She missed drug tests, and tested positive for amphetamines. She “disclosed she started using crystal meth shortly after her children were removed from her care,” but was “in denial about her drug use and [did] not appear to be interested in change.” She blamed Carlos for “pressuring her to use drugs.” She started attending a substance abuse treatment program, but was “only going through the motions” and “continue[d] to use drugs.”

Mother’s visits with L.C. and A.C. were affectionate, but “the children [became] upset about the mother’s last minute cancellations, late arrival, and early

departure from visits.”² They “report[ed] they like visiting their mother and have been brought to tears for the inconsistency of visits.” A social worker concluded mother “put her job above visits with her children, her case plan activities, and even her health. Even with 12 to 30 hours of overtime and two jobs, the mother[’s] resources are not well managed as she often finds herself with no money left for food, rent, and gas for transportation, directly impacting her visits with the children [M]other has not realized that her current decisions and behaviors have a direct impact on her ability to parent and care for the children.”

Meanwhile, mother contacted the children’s paternal uncle and his wife. The aunt and uncle “had been looking for the children and their mother since they heard [the children] were no longer with their father and were dependents of the Court.” The aunt and uncle took L.C., A.C., and their cousins to a restaurant to celebrate L.C.’s birthday. L.C. and A.C. “were very happy to find out they were not the only children with [their] last name,” “interacted well with their relatives, and had a good time at [the] party.”

The court terminated reunification services at the 12-month review hearing in December 2011. It set a hearing (.26 hearing) to select and implement a permanent plan for L.C. and A.C. (§ 366.26.)

The .26 Hearing

The children were soon placed with the aunt and uncle, who “expressed a strong desire to adopt the children.” The children were “content and comfortable in the home,” “happy to have so much family and enjoy[ed] spending time with them.” “The children openly discuss[ed] plans they have when they get older with the family and see themselves growing up with their current caregivers.” “[A]lthough [L.C. and A.C.] are

² A.C. and L.C. remained with the foster parents, but D.C. was moved to a new placement.

sad about not returning to their mother's care, they are happy about staying with" their aunt and uncle.

Initially, L.C. and A.C. "expressed concerns about adoption." The children were "upset about not being able to return to their mother's care." When told "the possibility of returning to his mother's care was very slim to none," L.C. "cried and said he was very sad as he kept the hope of returning to live with his mother" But by April 2012, A.C. told a social worker, "'Yes, I want to be adopted by them' (referring to her aunt and uncle)." And when asked about adoption, L.C. answered, "'Yes, I like it here with them' (referring to his aunt and uncle)."

During this time, mother "visit[ed] the children once a week due to her tight work schedule and contact[ed] them via phone several times a week." But she "continue[d] to cancel, reschedule, or fail[] to show up to visits. She also ha[d] the habit of showing up late to the visits, up to 20 minutes." L.C. and A.C. "enjoy[ed] and look[ed] forward to visits with their mother and overlook[ed] the disappointment they experience when she fails to show up, shows up late, fails to follow through on promises made to them, or is not attentive to them during visits. They also don't seem to mind the lack of attention received [from] their mother during visits as long as they get to see her and know she is well."

While the visits were filled with affection and interaction, mother also "answer[ed] texts and her phone" during visits. One time mother "would not pay attention" to L.C. as he tried "to share with his mother that he got a high score on one of his tests." Generally, mother did "not ask the children about how they [were] doing in school or at home," and "never asked [the aunt and uncle] about how the children [were] doing." Mother was "hesitant about confronting the children with undesirable behavior," leaving it up to the monitors "to redirect the children's behavior when it became inappropriate."

Mother filed a written motion for a bonding study in April 2012. The court denied the request. It noted, “[T]he children are older and have been able to express their feelings about their relationship with their mother . . . and also the children are currently in counseling to address their issues, [including] the possibility of adoption.” But the court ordered SSA “to ask the therapist, the children’s therapist, to make certain that they do address these issues in therapy: the possibility of adoption, their feelings related to adoption, and their feelings as that’s going to relate to their recommendation as to their mother” SSA scheduled initial assessments with a therapist.

As the .26 hearing approached, the children grew “more open about discussing the possible adoption by their caregivers. They both . . . expressed they would like to remain in their care and like having a family instead of a foster family. Although they like[d] being in the care of their relatives, they remain[ed] sad about not being able to return to their mother.” Mother was, “for the most part, consistent about visiting the children.” She was “more attentive to the children,” but remained unable to discipline them. Mother showed up to one visit “with a black eye and a swollen face” — Carlos had beat her. L.C. and A.C. “kept looking at her and were concerned for her well being.”

L.C. testified about mother at the .26 hearing. He called her “mommy,” which means “someone who loves me” and “who is supposed to care for you and shelter you and feed you.” He liked visits with mother; they would go out to eat, go for walks, window shop, go to the park, and talk about school and what he wanted to be when he grew up. She bought gifts for him, and he bought them for her. He cried when counsel asked him how he feels when the visits end. L.C. testified that “if it was up to [him],” he would live with mother. He was “sad” about the possibility of not seeing mother until he turned 18 years old. But when asked, “Is there anything that you really like to do with your mom that you can’t really do or don’t do with other people,” L.C. answered, “No.”

L.C. also testified he wanted to be adopted. He explained, “[M]y mom needs a little more time. She needs a little bit more time to get her act together,” and

“some time to think about how to take care of us.” When asked “what type of person” mother is, he answered, “[l]ike kind of confused” — “[s]he doesn’t know the right thing to do.” L.C. agreed he would “be okay with living with [his] aunt and uncle forever.” They “take care of [him] like a mommy is supposed to.”

After L.C. testified, mother renewed her motion for a bonding study. Her counsel noted L.C. seemed to have “a little bit of a conflict.” Counsel for SSA stated, “We have already addressed this.” The court agreed: “Yes. And at this point, that motion would be denied.”

Mother also testified. She noted the children had lived with her “since the day they were born” until September 30, 2010. Since then, she visited them twice a week, except when she missed visits “because of my job” or “because they were canceled by the people who had my kids.” She discussed the children and their interests, but did not know the names of their schools. She conceded dating D.C.’s abuser, Carlos, for eight months after the children were removed from her custody. She claimed that by “coincidence [they] went to the same place” when Carlos beat her again in April 2012. She blamed her bad decisions on drug abuse and “a hard life.”³ She stated, “I been through a lot. First with my husband uhm but before that I was sexually molested too and that is not easy to forget and because I feel lonely. I don’t have any family members. I don’t have anyone else. And it’s hard to raise three kids on your own when you don’t have anyone to help you.”

The court terminated mother’s parental rights and placed the children for adoption. It found mother did not visit the children “regularly and consistently overall,” as “for a significant period of time mother did not take advantage of all of her scheduled visits.” It noted, “Mother continues to make poor choices and use poor judgment as exemplified recently in April when she showed up to a visit with a black eye given to her

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Mother’s own father was D.C.’s biological father.

by her boyfriend or her ex-boyfriend, as mother said. The court did not find mother's explanation surrounding the incident to be credible." The court continued, "Mother's visits have not increased over the years and are still monitored. Mother has limited knowledge about the children's lives and there are still some issues related to some things such as parenting skills, such as knowing when and how to discipline the children and redirect them."

The court concluded, "The benefits of the permanence of adoption far outweigh any incidental benefit gained by maintaining the parental relationship. The children deserve to have a normal home and to be in a healthy, happy, loving, secure home with parents who are dependable and always there for them and will put their needs first."

DISCUSSION

The Beneficial Parental Relationship Exception

"A section [.26 hearing] is a hearing specifically designed to select and implement a permanent plan for the child" when reunification fails. (*In re Celine R.* (2003) 31 Cal.4th 45, 52 (*Celine R.*)) "Adoption is the Legislature's first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker." (*Id.* at p. 53.) Thus, "[i]f the court determines . . . that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).)

But the court may forgo terminating parental rights when "[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).) This is the beneficial parental relationship exception to adoption.

“The ‘benefit exception’ . . . may be the most unsuccessfully litigated issue in the history of law.” (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, disapproved on a different point in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.) “Because a [.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.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 (*Jasmine D.*)) Showing a sufficiently beneficial relationship is especially “‘difficult . . . in the situation, such as the one here, where the parents have . . . [not] advanced beyond supervised visitation.’” (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523 (*Jeremy S.*), disapproved on a different point in *In re Zeth S., supra*, 31 Cal.4th at pp. 413-414.)

To establish the exception, a parent must show “a beneficial parental . . . relationship exists.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 622 (*K.P.*)) The court’s finding on this point is “properly reviewed for substantial evidence.” (*Ibid.*) “[W]e 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.*))

“[A] *parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one.” (*Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) “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.” (*C.F., supra*, 193 Cal.App.4th at p. 555.) “The relationship that gives rise to this exception . . . ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’” (*K.P., supra*, 203 Cal.App.4th at p. 621.)

The parent must show the relationship “transcend[s] the kind of relationship the child would enjoy with another relative or family friend.” (*Jeremy S.*, *supra*, 89 Cal.App.4th at p. 523.) Even “frequent and loving contact” is not “sufficient to establish the ‘benefit from a continuing relationship’ contemplated by the statute” in the absence of a true parent-child relationship. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Even if a beneficial parental relationship exists, the parent must further show the relationship is sufficiently compelling to overcome the preference for adoption. (*K.P.*, *supra*, 203 Cal.App.4th at p. 622.) “[T]he [benefit] exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. The [benefit] exception is not a mechanism for the parent to escape the consequences of having failed to reunify.” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.)

Instead, the court must “‘balance[] 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.) “This “‘quintessentially” discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of

adoption,' is appropriately reviewed under the deferential abuse of discretion standard.”
(*K.P.*, *supra*, 203 Cal.App.4th at p. 622.)

Mother Shows No Prejudice from the Lack of a Bonding Study

Mother contends the court erred by failing to order a bonding study. “In attempting to establish or eliminate [the beneficial parental relationship] exception to the preference for adoption, the parties or the court may require a bonding study to illuminate the intricacies of the parent-child bond so that the question of detriment to the child may be fully explored.” (*In re S.R.* (2009) 173 Cal.App.4th 864, 869 (*S.R.*)) “[I]f the minors would benefit from a continuing relationship with the parents, termination of parental rights is detrimental to the minors’ interests. [Citation.] The expert evidence of a bonding study goes directly to this interest.” (*Id.* at p. 871.)

“There is no requirement in statutory or case law that a court must secure a bonding study as a condition precedent to a termination order.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339; accord *S.R.*, *supra*, 173 Cal.App.4th at p. 871.) Rather, the decision whether to order a bonding study “is a matter of discretion.” (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084; accord *In re Lorenzo C.*, at p. 1341.)

To be sure, subsequent events undercut the court’s stated rationale for denying the motion. The court concluded therapy would be an adequate avenue for exploring the parent-child relationship. It directed SSA “to ask the therapist, the children’s therapist, to make certain that they do address” the children’s feelings about adoption and the termination of mother’s parental rights. Yet the court terminated parental rights after the children had only an initial assessment.⁴ Mother likens this

⁴ SSA contends mother forfeited any error by not seeking a continuance to allow the children to have more therapy. But mother was not seeking more therapy. She sought a bonding study — and asked for one twice.

situation to *S.R.*, where the court wrongly vacated its order for a bonding study solely due to the agency’s “apparent difficulty . . . in complying with the order.”⁵ (*S.R.*, *supra*, 173 Cal.App.4th at p. 871.)

Be that as it may, mother concedes the basic issue is whether “[i]t is reasonably probable the trial court would have found a parent-child bond exception if it had obtained a bonding study or therapist reports. . . .” “The California Constitution prohibits a court from setting aside a judgment unless the error has resulted in a ‘miscarriage of justice.’ [Citation.] We have interpreted that language as permitting reversal only if the reviewing court finds it reasonably probable the result would have been more favorable to the appealing party but for the error. [Citation.] We believe it appropriate to apply the same test in dependency matters.” (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 59-60.)

No such reasonable probability exists here. While a bonding study may have been relevant to determining whether the exception applied (*S.R.*, *supra*, 173 Cal.App.4th at pp. 869-871), it is not dispositive. A bonding study is just an expert opinion, which the court may reject if it “does not do so arbitrarily.” (*People ex rel. Brown v. Tri–Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1568.) Like any one piece of evidence, a bonding study may be outweighed by other evidence. And here, mother was nowhere close to prevailing on the beneficial parental relationship exception.

As a threshold matter, substantial evidence supports the finding mother failed to “maintain[] regular visitation and contact with the” children. (§ 366.26, subd.

⁵ Even if *S.R.* provides an apt analogy, it is not clear the court had to order a bonding study here. Mother “was required to muster her evidence before the termination of reunification services.” (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1196.) “[A]t such a late stage in the proceedings [mother’s] right to develop further evidence regarding her bond with the children was approaching the vanishing point.” (*Id.* at p. 1195.) “The Legislature did not contemplate such last-minute efforts to put off permanent placement.” (*Id.* at p. 1197.) SSA does not raise the timeliness issue though, and we do not rely upon it.

(c)(1)(B)(i).) Even during the reunification period, mother “put her job above visits with her children,” and did not ensure she always had “gas for transportation” to visitation. The children cried over “the inconsistency of visits.” Mother cancelled visits on short notice, arrived late, and left early. After reunification services were terminated, mother “continue[d] to cancel, reschedule, or fail[] to show up to visits [and had] the habit of showing up late to the visits”

Moreover, overwhelming evidence showed no beneficial parental relationship existed. (See *K.P.*, *supra*, 203 Cal.App.4th at p. 622.)

Mother does not “meet the [children’s] need[s] for a parent” (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) Mother never made more than minimal progress on her case plan. She never resolved the sexual abuse and domestic abuse issues that led to the dependency. Most notably, she continued her relationship with Carlos, the man who beat her and raped D.C. She even brought him to a visitation with D.C. She defended Carlos at times, even though he continued to beat her. Other issues arose, too. Mother could not manage her resources despite working two jobs, often lacking money for food, rent, or gas. And mother began abusing drugs, purportedly at the insistence of Carlos. She only went “through the motions” at her substance abuse treatment classes, missing drug tests and testing positive for amphetamines. Yet she refused to take her prescription medication for depression.

Nor does mother “occup[y] a parental role.” (*C.F.*, *supra*, 193 Cal.App.4th at p. 555.) Her time with the children after they were removed never “advanced beyond supervised visits.” (*Jeremy S.*, *supra*, 89 Cal.App.4th at p. 523.) Mother’s inconsistent visitation precluded “day-to-day interaction, companionship and shared experiences.” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Even when mother visited, she “fail[ed] to follow through on promises” and was “not attentive.” Mother spent the visits texting, talking on the phone, and talking to people besides the children. She did “not ask the children about how they are doing in school or at home” — she did not even know where

they went to school. And she could not discipline the children, leaving that key parental duty to the monitors.

Given this sad history, there is no reasonable probability a bonding study would have concluded mother had a beneficial parental relationship with the children. Even if it did, there is no reasonable probability the court would have credited it over the mountain of contrary evidence. And there is no reasonable probability the court would have found whatever parental relationship mother may have had with the children outweighed the “security and the sense of belonging” offered by aunt and uncle. (*C.F., supra*, 193 Cal.App.4th at p. 555.) L.C. recognized mother “doesn’t know the right thing to do”; she needed “to get her act together” and “think about how to take care of us.” In contrast, his aunt and uncle took “care of [him] like a mommy is supposed to.” L.C. and A.C. both wanted to be adopted.⁶ They were “content and comfortable” in the aunt and uncle’s home, and saw “themselves growing up with” them.

It is next to impossible to imagine a bonding study could have rendered this one of the few “extraordinary case[s]” where the exception applies. (*Jasmine D., supra*, 78 Cal.App.4th at p. 1350.) Mother cannot rely on the lack of that study to “escape the consequences of failing to reunify.” (*Id.* at p. 1348.)

⁶ We defer to the court’s resolution of any conflicting feelings L.C. and A.C. expressed about adoption. (See *C.F., supra*, 193 Cal.App.4th at p. 553.)

DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.