

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.A., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

L.A.,

Defendant and Appellant.

G052650

(Super. Ct. No. DP019327)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andre Manssourian, Judge. Affirmed.

Lawrence A. Afill, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

L.A., the mother of J.A., contends the juvenile court's order terminating her parental rights is not supported by substantial evidence. Specifically, she argues the court erred in terminating her parental rights because (1) she has maintained regular visitation and J.A. would benefit from continuing the relationship (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i); all undesignated statutory references are to this code); and (2) contrary to J.A.'s best interests, terminating L.A.'s parental rights would substantially interfere with J.A.'s relationship with her siblings (§ 366.26, subd. (c)(1)(B)(v)). Finding no error, we affirm.

I

PROCEDURAL BACKGROUND AND FACTS¹

J.A. and her three brothers (J.G., B.A., and C.A.) were removed from the parental home when she was two years old in January 2010. The children have three different fathers. Because J.H. is the presumed father of J.A. and C.A., and is involved in the underlying facts in this matter, we refer to him as "father."² The children were removed from the household in January 2010 as the result of bruises purportedly inflicted on J.G. by father. SSA filed a dependency petition listing all four children. The juvenile court approved the detention of the children later that month.

The jurisdictional and dispositional hearing was held on October 27, 2010. Mother and father stipulated to a factual basis for the dependency action (§ 300, subd. (b)), and the children were made dependents of the juvenile court. The court released the children to mother with certain conditions attached. Two conditions pertinent here were that the father cannot live with the family and any visits by the father had to be monitored.

¹ We granted Orange County Social Services Agency's (SSA) request for us to take judicial notice of our earlier opinion in *In re Christian A.* (Jan. 26, 2016, G052231) [nonpub. opn.].

² Father did not appear at the hearing below and is not a party to this appeal.

Less than a month later, the children were again detained, this time based on an alleged violation of the condition prohibiting father from having unmonitored visits with the children. After a trial on dispositional issues in December 2010 and January 2011, the court found clear and convincing evidence that section 361, subdivision (c) applies to the parents, ordered physical custody of the children removed from the parents, and found that out of home placement is necessary. Not all the children were placed together.

J.A. and two of her brothers began a 60-day trial visit with their mother on August 5, 2011. That visitation ended early based on substantiated allegations of physical abuse to one of J.A.'s brothers by mother. Thereafter, mother's visits with J.A. and two of her brothers were monitored. Mother was consistent and timely in exercising her visitation. At the end of July 2012, the monitor requirement was lifted based on "some improvement in inappropriateness during the visits." Thereafter, visitation was supervised by staff at Orangewood Children and Family Center. The monitor requirement was reinstated in March 2013, due to concerns over "inappropriate comments and/or discussion of the case by the mother." The children reported that mother was encouraging the children to go live with their maternal aunt in Washington, so mother could reunite with them there. Mother also told J.A. that her father returned from Mexico and that she (mother) fears for her life. J.A. informed her foster mother that mother told her to disobey house rules and to hit other children in the home in the hope that J.A. would be moved into a different home.

The six-month, 12-month, and 18-month review hearings were combined and held in March 2012. The court found returning the children would create a substantial risk to their physical and emotional well-being, and that the reasonable services had been afforded the parents. The court stated mother's progress was "minimal." The court ordered reunification services terminated (§ 366.22, subd. (a)(1))

and ordered a hearing pursuant to section 366.26 (.26 hearing) to terminate parental rights and for a selection and implementation of a permanent placement plan.

The court eventually held the .26 hearing in August 2015, more than five and one-half years after the children were taken out of the home in January 2010. Also under consideration at the time of the permanency hearing was a section 388 motion by J.A.'s counsel to reduce the mother's visitation. J.A.'s social worker and J.A.'s mother testified at the hearing. J.A. was two years old at the time she was initially removed from the family residence and almost eight years old at the time of the permanency hearing. J.A. had been placed in about seven different residential settings prior to trial.

The social worker has been J.A.'s assigned social worker since 2011. She recommended terminating the parents' parental rights and placing J.A. for adoption. She said J.A. is likely to be adopted and that her current caregivers want to adopt her. According to the social worker, the caregivers fell in love with J.A. The social worker said J.A. appears comfortable in their home and says she wants to stay with and be adopted by her caregivers. J.A. understands that if she is adopted, she will no longer have visits with mother. Still, J.A. said she would like to continue to visit with her brothers.

The social worker was aware of the request to reduce the number of visits by the mother and agreed with the reduction. The social worker said J.A. wants to spend more time with her caregivers, and the caregivers have expressed concern over J.A.'s behavior upon return from visiting with mother. They said J.A. returns home anxious and agitated after the visits. A monitor noticed J.A. seemed uncomfortable during visits.

The social worker agreed mother was regular and timely with her monitored visits, but stated mother has been inappropriate during visits. She said J.A. reported that her mother asked her for her telephone number and her address, both of which are supposed to be confidential. The social worker said mother's conduct caused J.A. anxiety and "further fears." Just a few months prior to trial, J.A. said her mother told

her she (J.A.) would move and live with a relative in Mexico. The social worker said that on one recent visit, mother braided J.A.'s hair very tightly, hurting J.A., because mother was upset with J.A. Mother did not stop when J.A. asked her to stop.

In the last two years, J.A. has not said she wants to return to her mother. On occasion, J.A. has told her caregiver that she does not want to go to the visits.

The social worker said J.A., who has been out of the home for more than five years, needs permanency and a home to grow up in like a normal child. She said J.A. should not have to worry "that if something goes bad" she might get taken out of her new home and placed in yet another foster home. The social worker said that prior to 2011, J.A. and her two older brothers were released to their mother, but mother did not comply with the conditions of their release. Additionally, J.A. had been temporarily released to mother before, but that effort failed due to sustained allegations of physical abuse. By the time of trial, the parents' parental rights were terminated in connection with J.A.'s younger brother.

The social worker said she had previously recommended termination of reunification services based on mother's behavior. She conceded that although reunification services were terminated in March 2012, mother maintained regular weekly visits with the children. J.A. is in therapy and has told her therapist she wants less contact with her mother. J.A. told the social worker she wants to spend "more family time" with her caregivers. J.A. said she feels her mother is mean at times and she (J.A.) prefers the visits when her brothers are present.

Although J.A. has a "very strong bond" with her brothers, the social worker said she does not believe terminating the sibling relationship would be detrimental to J.A. The reason for the social worker's conclusion is that J.A. has not lived with her brothers for several years. She said J.A. enjoys spending time with them, watching movies, playing, and eating, but once the visit is over, "she leaves happily and goes back to her

daily routine.” Additionally, the caregivers who hope to adopt J.A. have talked about allowing J.A. to maintain contact with her brothers.

Mother testified she has maintained visitation since reunification services were terminated. Mother said J.A. always runs to her, hugs her, and says thank you for visiting at the visits, because she fears there will be a day when mother will not visit. Mother said she feels close to J.A. She denied ever telling J.A. to misbehave at the caregivers’ home.

Mother said J.A. is very close to her brothers. She said they ask each other during visits how their week was and about brushing teeth. She said they have a special bond with each other and terminating parental rights would be “very bad” for the sibling relationship.

The court found J.A. adoptable and likely to be adopted. The court then addressed whether the bond between J.A. and mother was such that it outweighed the benefits J.A. would receive from being adopted, and concluded it did not. Additionally, the court found J.A.’s relationship with her brothers did not outweigh the benefits J.A. would receive by being adopted. The court noted the caregivers will see to it that the relationship is maintained even with adoption. The court found adoption and termination of the parental rights of the mother and father were in J.A.’s best interests. Adoption was selected as the permanent plan. Lastly, the court granted mother a two-hour “good-bye” visit.

II

DISCUSSION

The objective of California’s ““dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time.” [Citation.] When the child is removed from the home, the court first attempts, for a specified period of time, to reunify the family.’ (*In re Celine R.* (2003) 31 Cal.4th 45,

52.) When those efforts fail, “the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan.” (*Ibid.*) “Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.” [Citation.] “A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.” [Citation.] It is designed to protect children’s “compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.” (*Id.* at pp. 52–53.) “The Legislature has thus determined that, where possible, adoption is the first choice. “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.)” (*In re H.R.* (2012) 208 Cal.App.4th 751, 759.)

At the permanent placement hearing, if the court finds by clear and convincing evidence the child is likely to be adopted, the court is required to “terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1).) Mother contends the evidence does not support terminating her parental rights. When such a claim is made, we must determine whether substantial evidence, contradicted or uncontradicted, supports the decision. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We resolve any conflicts in the evidence in support of the decision. (*Ibid.*) Whether mother’s parent-child relationship with J.A. is beneficial is a factual issue subject to review for substantial evidence (*In re K.P.* (2012) 203 Cal.App.4th 614, 622), but we review whether that relationship constitutes a compelling reason to not terminate her parental rights for an abuse of discretion (*ibid.*).

A. Section 366.26, Subdivision (c)(1)(B)(i)

As stated above, if the court determines at the permanency plan hearing that clear and convincing evidence shows “it is likely the child will be adopted,” the statute

requires the court to terminate the parental rights and “order the child placed for adoption.” (§ 366.26, subd. (c)(1).) Subdivision (c)(1) of section 366.26 specifically lists exceptions to that rule. Notwithstanding clear and convincing evidence of the likelihood of adoption, the court need not terminate parental rights and place the child for adoption, if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to one or more” specifically listed circumstances. (§ 366.26, subd. (c)(1)(B).) “The statutory exceptions merely permit the court, *in exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.) The burden is on the parent to demonstrate that “termination of parental rights would be detrimental under one of the exceptions listed in section 366.26 subdivision (c)(1). [Citation.]” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

Under “the so-called benefit exception” (*In re Zeth S.* (2003) 31 Cal.4th 396, 403), parental rights may not be terminated when the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship” (§ 366.26, subd. (c)(1)(B)(i)). That mother continued her visitation with J.A. cannot be disputed. The juvenile court noted the first element of the exception set forth in section 366.26, subdivision (c)(1)(B)(i)—continuous visitation—was met. Continual visitation, however, is not enough. There must be proof the child would be “greatly harmed” by terminating the relationship. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) The court did not abuse its discretion in finding J.A. would not be harmed by terminating her mother’s parental rights based on the continued visitation and J.A.’s relationship with her mother.

J.A. was removed from mother’s household when she was two years old. She was almost eight years old at the time of the permanency hearing. She has spent the vast majority of her life in foster care. Indeed, it is most likely she does not even

remember living with her mother prior to being removed from the residence. She has had much more contact in her life with caregivers than she has had with her mother.

In the two years immediately preceding the permanent placement hearing in this matter, J.A. has consistently expressed her desire to stay with her caregivers and has not stated a desire to return to her mother. J.A. has, on occasion, told her caregivers that she did not want to go to a visit. She told her therapist she wanted the number of visits reduced. She has also stated her desire to spend more time with her caregivers. J.A.'s caregivers have voiced concern over behavior issues demonstrated by J.A. after returning from visits. The monitor noticed J.A. seemed uncomfortable during visits. On one visit, mother was upset with J.A. and braided her hair so tightly it hurt J.A.. Mother did not stop when J.A. asked her to stop because it hurt. On other occasions, mother told J.A. she would be moved to live with relatives in Mexico, which caused J.A. distress. Mother has also inappropriately asked J.A. for her address and telephone number, both of which are confidential. That inquiry caused J.A. anxiety and "further fears." Mother has talked negatively about J.A.'s caregivers in front of her during visits. J.A. stated her wish to live with caregivers forever, even before going to live with her present caregivers. Moreover, J.A. understands that if she gets adopted there will be no visits with mother.

"Interaction between [a] 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." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The parent-child relationship benefit exception applies where "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."

(*Ibid.*) Given the above facts, we cannot find the court abused its discretion in not finding in favor of the exception. The benefits of continuing the relationship between J.A. and mother, such as it is, does not outweigh the benefits J.A. would receive from adoption: a permanent, stable, loving relationship with her caregivers.

B. *Section 366.26, Subdivision (c)(1)(B)(v)*

The second exception mother contends applies is based on the relationship between J.A. and her siblings.³ Under this exception, the court need not place a child for adoption when “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and 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.” (§ 366.26, subd. (c)(1)(B)(v).)

“[T]he ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a ‘compelling reason’ for concluding that the termination of parental rights would be ‘detrimental’ to the child due to ‘substantial interference’ with a sibling relationship.’ [Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61.) This balancing is only required if the court finds the sibling relationship is

³ J.A. has not appealed and does not raise this issue.

“sufficiently significant to cause detriment on termination.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.)

The evidence did not establish that J.A.’s relationship with her siblings was such that termination of the relationship would be detrimental to J.A. While J.A. clearly enjoyed visiting with her brothers, J.A. requested to reduce the number of family visits. There was no evidence J.A. had any difficulty leaving after any visit with her mother and brothers. For example, she never cried at the end of visits.

Mother contends, without citation to authority, that it is “inappropriate” for a juvenile court to consider possible visitation with siblings after the termination of parental rights. She is wrong. The court was free to consider the fact that the prospective adoptive parents, J.A.’s caregivers, are willing to continue with sibling visitations. (See *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014; *In re Megan S.* (2002) 104 Cal.App.4th 247, 254; see also § 366.29 [order placing a child for adoption pursuant to section 366.26 does not prevent the prospective adoptive parents from facilitating postadoptive sibling visitation and court may, with adoptive parents’ consent, make a provision for continued visitation in the final adoptive order].)

The fact that J.A.’s caregivers are willing to continue having J.A. visit with her brothers means “termination of parental rights [does] not necessarily foreclose the continuation of the sibling relationships.” (*In re Valerie A.*, *supra*, 152 Cal.App.4th at p. 1014.) Consequently, there was no showing termination of parental rights would ““detrimental”” to J.A. due to ““substantial interference”” with her sibling relationships. (See *In re Celine R.* *supra*, 31 Cal.4th at p. 61.) J.A. did not live in the same household as her brothers. Her contact with them consisted of visits. If the visits are likely to continue even though mother’s and father’s parental rights are terminated, it would be difficult to establish a substantial interference with her sibling relationship, much less that there would be any detriment to J.A. vis-à-vis termination of parental rights and her maintaining her relationship with her siblings. In addition, J.A. knew her

visits with her mother included visiting with her brothers, yet she requested less visits. This evidence supports the court's decision.

Moreover, even if a child would suffer some detriment due to severing a relationship with a sibling, that does not mean the juvenile court would necessarily err if it proceeded to terminate parental rights. The issue in such a case would be whether the child "would benefit more from adoption than she would gain by maintaining a relationship with [the siblings]." (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 252.) J.A. has been in the juvenile court system since she was two years old. Parental rights were terminated when she was almost eight years old. She has been in the system the vast majority of her young life—almost four times longer than she lived with her mother, and when she lived with her mother she was so young she likely does not remember. She is entitled to stability in her life now. (*Id.* at p. 254.) The court did not err in terminating the parental rights.

III

DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.