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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.S. et al., Persons Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

G052893

(Super. Ct. Nos. DP024085,  
DP024086 & DP024087)

O P I N I O N

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

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Paige, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

R.S., the mother (mother) of J.S., R.S., Jr., and K.S., challenges the juvenile court's order terminating her parental rights. (Welf. & Inst. Code, § 366.26; all further statutory references are to the Welf. & Inst. Code unless otherwise stated.) She argues the court should have applied the parental benefit exception under section 366.26, subdivision (c)(1)(B)(i).<sup>1</sup> We disagree and affirm.

## **FACTS**

### *Detention & Jurisdiction*

In August 2013, Orange County Social Services (SSA) detained then seven-year-old, J.S., four-year-old, R.S., Jr., and one-year-old, K.S., due to their parents, neglect. SSA became involved as the result of a burglary investigation that tied both parents to the recent theft of several items from a neighbor's mobile home.

SSA found the children living in extremely unhealthy and unsafe conditions, including exposure to raw sewage, dead rats and mice, and manifold piles of clothing and junk. Although it was close to 2:00 p.m. when the social worker arrived, the children told her they had not been fed, and after a quick search, she realized there was no food in the home.

J.S. and R.S., Jr., reported seeing domestic violence. They also said father used inappropriate physical discipline. J.S. said she was once bruised by either father's hand or a broom. She also had a urinary tract infection, but she was unable to find her medication in the mess and clutter of her parents' home.

J.S. also told the social worker that father gave mother "white stuff" to smoke, and that she had seen mother smoke methamphetamine and father smoke marijuana. Father had also showed her two sex videos and a methamphetamine pipe he

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<sup>1</sup> Father did not appeal from the juvenile court's order terminating his parental rights.

found in mother's car. R.S., Jr., said father grabbed a methamphetamine pipe out of mother's purse and showed it to him.

SSA took custody of the children and placed them in a group home. However, they were quickly moved to their paternal grandparents' home. The children thrived in their new environment, and the grandparents said they were willing to adopt, if necessary.

According to SSA reports, both parents have criminal histories and unresolved substance abuse issues. Mother's drug of choice is methamphetamine. Mother was working as a pharmacy technician when the children were detained. However, she also had methamphetamine and a methamphetamine pipe in her possession, items that were discovered after her arrest for the burglary.

By the end of August, SSA had made several attempts to contact the parents by telephone to arrange an interview. Eventually, SSA sent a letter to the parents' last known address. The letter advised the parents of SSA's efforts to reach them by telephone. It further advised the parents of the need to enroll in a substance abuse treatment program, participate in a perinatal program, participate in individual and group substance abuse counseling, attend Narcotics Anonymous (NA) 12-step meetings, and consent to routine drug tests. The parents received referrals for inpatient drug programs and regular drug testing.

Nevertheless, mother tested positive for amphetamine three times between the end of August and mid-September, and she missed a number of other drug tests. She neither enrolled in an outpatient drug program, nor did she attend NA meetings as directed. After leaving a voicemail about the need to schedule weekly, monitored visitation, the social worker learned mother had not given SSA a working telephone number.

In October, the social worker met mother at her place of employment at mother's request. However, when the social worker arrived, mother said she could not

meet with her due to a high work load that day. The social worker directed mother to call and make an appointment, but mother never called.

### *Contested Jurisdiction Hearing*

At the hearing, SSA submitted on their reports. Father called J.S. to testify. The court ordered her testimony to be taken in camera. (Evid. Code, § 350.) Outside the presence of her parents, J.S. denied she told the social worker father hit her with his hands and a broom. She said father usually talked to her, or used time-outs, as punishment. She also denied saying mother and father hit each other, or that she saw father give mother white powder to smoke. J.S. said several times she did not know why SSA had taken her, and her siblings, to live with their grandparents.

At the conclusion of the hearing, the court declared the children to be dependent minors (§ 360, subd. (d)), removed custody of the children from their parents (§ 361, subd. (c)(1)), and approved SSA's proposed case plan for family reunification services and supervised visitation. The children remained with their grandparents, and the court advised mother and father of the possibility their parental rights could be terminated, pursuant to section 366.26. The matter was set for a six-month review hearing. (§ 366.21.)

### *Six-Month Review Period and Hearing*

For the six-month review, SSA reported mother again missed several drug tests. She also failed to provide proof of enrollment in an inpatient, or outpatient, drug treatment program, attend NA meetings, complete a parenting class, or enroll in the perinatal program. She did not respond to the social worker's repeated requests to provide proof of compliance with the case plan, nor did she provide a working telephone number.

In the end, the social worker described mother's participation with the case plan as "MINIMAL." The social worker wrote, "[t]he prognosis for Family Reunification continues to be poor as the children's parents have failed to actively

participate in their case plan related services which were designed to assist the parents in overcoming barriers to safely reunify with their children. [¶] Based on the aforementioned, the undersigned respectfully recommended that the children continue to reside in the care of their paternal grandparents.” She also recommended the court “terminate Family Reunification Services for the children’s mother” and schedule a section 366.26 hearing.

In May 2014, SSA learned mother had been terminated from the perinatal program about a month after she began, because she refused to drug test or participate in the program.

In June, mother informed the social worker she was being evicted from her home. She blamed her lack of participation in the case plan on the social worker’s failure to give her bus passes, although mother usually drove a car to work and her visits. However, the social worker provided a bus pass. She also arranged to have mother participate in daily random drug testing during the month of July, but mother missed numerous tests.

At the hearing, mother admitted she was familiar with the requirements of her case plan. She testified that she took a parenting education class as part of an outpatient program named, Mariposa. However, when asked why she had not provided proof of completion, mother acknowledged that she had yet to attend her first day in the program. Mother said she went to “a different program” early in the dependency proceedings, but she did not have transportation at the time and was terminated. And, she could not recall the last time she drug tested.

Mother said she attended a 12-step program, and that she regularly visited the children. She explained her legal cases required a lot of time and were very stressful to deal with. In addition, mother said she had been “very, very depressed, so I’ve just tried to do as much as I could.” Nevertheless, mother believed she could complete her case plan if she were granted an additional six months of reunification services. When

asked why it had taken so long to start her case plan, mother said, “I just had no will, I don’t know.”

The social worker testified mother signed up for a personal empowerment program, but she attended only four of 10 sessions. Mother attended three parenting programs, but she had been terminated from them all for noncompliance. Mother provided proof of her attendance at Alcoholics Anonymous 12-step meetings, but the social worker said mother did not have a sponsor, nor did she seem familiar with the 12-step program.

Mother attended a few substance abuse classes, but she would not attend regularly and she refused to drug test. The social worker also said mother told her at least three times that she registered for the Mariposa drug program, but the social worker was never able to verify this. In fact, during the almost 10 months of services already provided, the social worker found no evidence mother ever submitted to drug treatment or testing.

At the conclusion of the hearing, the court stated mother’s progress from September 2013 to July 2014 had been “minimal, at best.” The court agreed with SSA’s recommendation to terminate reunification services and order a hearing under section 366.26.

#### *Selection and Implementation Hearing*

A couple of months after the six-month-review hearing, SSA lost contact with mother. Nevertheless, mother continued to visit the children four nights a week, and the children enjoyed the mother’s visits. The grandparents told the social worker they were planning a family Thanksgiving. The grandparents reiterated they were willing to adopt the children.

Nevertheless, in December 2014, SSA changed the permanent plan from adoption to guardianship. The grandparents had expressed a desire to give the parents more time to complete the service plan and regain custody of the children. Thus, in

January 2015, the court determined placement with the grandparents under a legal guardianship was in their best interest.

*Review Period*

In April 2015, the grandparents reported that mother had stolen several items from their home including a computer, a new pair of shoes, and some tablets for the children. On another occasion, they interrupted mother and her new boyfriend in the process of taking more items from the grandparents' home and garage. The grandparents had also recently received a letter from the Akua Motor Inn stating that mother had taken a flat screen television, a lock rack, two towel bars, and assorted linens from one of their motel rooms.

After these incidents, the grandparents said they were no longer willing to allow mother into their home, although they did allow mother to visit the children in the yard. They decided to proceed with adoption, citing concern over mother's recent conduct as a factor in their decision to proceed. The social worker agreed. "The undersigned believes that adoption with their relative caregivers is no[w] the most appropriate permanent plan for the children. The relative caregivers are providing the children with a safe, stable, and nurturing home, and wish to adopt them."

Around this time, mother contacted the social worker and asked for visitation. She also said she was sober and attending 12-step meetings. The children expressed interest in seeing their mother, and they said mother helped them with homework, took them to the park, and put them to bed.

At the conclusion of the review hearing, the court determined legal guardianship was no longer appropriate and ordered the setting of another section 366.26 hearing.

*Contested Selection and Implementation Period and Hearing*

Mother was incarcerated in August 2015. Visitation continued during her incarceration, although now it was down to once per week. The social worker reported

that the visits went well. But J.S. said visiting her mother in jail was “comfortable and good to see [her], but also sad at the same time.”

SSA’s adoption assessment concluded the children were adoptable. The grandparents were considered to be suitable caretakers, and the children were generally favorable about being raised in the grandparents’ home.

At the hearing, the social worker explained the reason for the change in SSA’s recommendation from the previous six months. The social worker stated, “First of all . . . the children [are] adoptable. And that’s . . . the children are in good health.” “They don’t have any behaviors. They’re doing fine emotionally. And then specifically there are people willing to adopt them. So they are adoptable.”

The social worker also testified the children benefitted from visits with their parents. However, she believed the stability of the grandparents’ home outweighed any benefit from the continuation of the parent-child relationship. In fact, the social worker stated she believed mother no longer had a parental role in their children’s lives.

Mother testified she consistently visited the children. They call her “mom” or “mommy,” and they enjoy seeing her. Before her incarceration, mother visited the children four times a week at the grandparents’ home. During the visits, she would put them to bed, help them with homework, or take them to the park. The children were very affectionate and happy to see her. Mother also said the end of the visits [were] always very emotional, and the children told her “they wish they could come with [me], but, you know.”

When asked if she had served in a parental role throughout the children’s lives, mother said, “Of course.” She explained the children call her “mommy,” and when they go to doctors, “they cry for mommy and daddy.” She continued, “[t]hey don’t – you know, they need us. They’re in school. I mean they have their daddy, you know, if possible there when they have like awards and stuff like that. So they know the

difference between their grandparents and us. And emotionally I think that they need us, I mean, in their life.”

When asked the difference between her role and the grandparent’s role, mother testified, “I just think maternally that there’s a bond between a mother and a child that there won’t ever be between a grandmother and a child or a grandfather and a child. . . . I mean their secrets, their – whatever they feel uncomfortable with I don’t think that they would go to their grandparents with.”

Mother also believed her separation from the children had been extremely difficult for them. As she testified, “The first time that we were incarcerated and we were released on bail, my daughter cried like from the bottom of her heart to me. She needs us. She can’t explain those feelings to her grandparents or to anyone else. She – sometimes she told me she feels scared. She doesn’t want to explain how she feels. I just feel that nobody really understands the kid’s feeling in this. I think that’s overlooked.” In fact, mother said that at the end of the most recent visit, R.S., Jr., asked, “When are you coming home, mommy?”

J.S., now nine years old and in the fourth grade, gave her testimony outside the presence of her parents. (§ 366.26, subd. (h)(3)(A)(1).) She said she enjoyed living with her grandparents. She sometimes calls them “mom and dad,” although mostly she calls them “Ajii and Ajja.” J.S. enjoys seeing her mother, “[m]ost of the time.” When asked why she enjoyed the visits, J.S. said “[b]ecause that now she’s proud of me and just with me.” J.S. thought her mom was a “good” mom, and she said, “I’m alone without my mom, I feel like I’m no one.” She also said her mother was a special person who could cheer her out of a sad mood. However, J.S. also said she wanted to live with her grandparents.

At the conclusion of the hearing, mother’s counsel argued, “[s]o the real issue before this court is the beneficial relationship. And as this court is well-aware, some of the factors to consider are the age of the child, the portion of the child’s life

spent in the parents' custody, the positive or negative affects of the interaction between the parents and the child, and the child's particular needs. And, most importantly . . . whether the parent fills a parental role in the child's life."

SSA pointed out mother's lackluster performance during the over two years of her case plan. Her recent minimal efforts were simply too little, and too late. On the other hand, J.S. seemed to understand adoption, and it appeared she would be able to accept it. As county counsel argued, "[the parents] did nothing to ensure the security, safety and stability [of] their children . . . ."

In making his ruling, the judge acknowledged the bond between the children and their parents. However, the court also observed, "that bond does not outweigh the benefits they will derive from adoption. It's just for you the sad reality of the situation. I do want to acknowledge you have a bond with these children and a tremendous love for them and love from them, but it does not outweigh the stability, the permanency, the benefits they will derive from being adopted one day, by the . . . grandparents, hopefully." The court considered the wishes of the children, but found their best interest served by the termination of parental rights and adoption.

## **DISCUSSION**

### *The Parental Benefit Exception*

Mother asserts the children would benefit from continuing her relationship with them, and the court erred by not applying the parental benefit exception under section 366.26, subdivision (c)(1)(A) or (B). We disagree.

We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) "In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights" apply. "The court, 'in *exceptional circumstances*,' may 'choose an option other than the norm, which remains

adoption.’ [Citation.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when 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).)” (*In re Anthony B.*, *supra*, 239 Cal.App.4th at pp. 394-395.)

Here, the court found mother maintained regular visitation and contact, and the record supports this finding. However, the court also concluded mother failed to show maintaining her parental role with the children outweighed the benefits of being adopted. The children were thriving in the grandparents’ home. They were happy, healthy, and developmentally on target. J.S. understood adoption and seemed reconciled to it. R.S., Jr., said he felt “good” about adoption because he would stay with his grandparents. Mother believed the children were suffering in silence, but there were few outward signs of distress.

Furthermore, overwhelming evidence shows the grandparents, and not mother, had been fulfilling parental roles for the children for some time. When counsel asked J.S. if she looked to mother for the types of things mothers do for their children, J.S. said, “Not really.” As J.S. explained, she had lived with mother in her grandparents’ home for most of her life. In fact, the children were detained during one of the rare periods of time when mother did not live with the grandparents. On her own, she did not properly care for the children’s most basic needs. When SSA intervened, mother’s house was unsafe, unsanitary, and bereft of food.

Finally, mother has done nothing during the whole of the dependency period to rectify the situation. Her frequent interactions with the children were generally positive, but mother utterly failed to show how maintaining her parental relationship with the children outweighed the benefit they would gain by adoption. “If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency

plans.’ [Citations.]” (*In re Anthony B., supra*, 239 Cal.App.4th at pp. 394-395.) In this case, substantial evidence supports the judgment.

**DISPOSITION**

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.