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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re R.L., a Person Coming Under the  
Juvenile Court Law.

H037157  
(Monterey County  
Super. Ct. No. J40016)

MONTEREY COUNTY DEPARTMENT  
OF SOCIAL AND EMPLOYMENT  
SERVICES,

Plaintiff and Respondent,

v.

R.L., et al.

Defendants and Appellants.

Slightly more than six years after the minor, R.L. was placed in protective custody, the juvenile court terminated the parental rights of R.L.'s mother, V.V., and father, R.L., and freed the eight-year-old girl for adoption. Mother and father appeal separately from this decision. They both argue that the court erred by denying father's request for a bonding study concerning R.L.'s relationship with her siblings, and his request for an evidentiary hearing regarding the termination of parental rights. Father contends further that there was insufficient evidence in the record to support the court's conclusion that the sibling relationship exception did not apply; the court erred in denying the motion to

withdraw of the attorney for R.L. and her siblings; and the court erred in failing to inquire regarding the possibility of father's Native American ancestry.

We conclude that the court did not abuse its discretion in denying father's request for a bonding study. We also hold that there was no error in any purported denial of a request for an evidentiary hearing and that father's sufficiency-of-the-evidence challenge is without merit. We conclude further that any error in the purported denial of counsel's motion to withdraw on behalf of R.L. and her siblings was harmless. Lastly, we find no error by the court in allegedly failing to inquire about father's possible Native American ancestry. Accordingly, we will affirm the order after the selection and implementation hearing declaring adoption as the permanent plan for the child, R.L., and terminating the parental rights of mother and father.

## FACTS AND PROCEDURAL HISTORY

### I. *Initial 2005 Petition*

On May 12, 2005, the Monterey County Department of Social and Employment Services (Department) filed a petition alleging the parents' failure to protect R.L. and that she had been left without any provision for support or that her parent had been incarcerated, under Welfare and Institutions Code section 300, subdivisions (b) and (g), respectively.<sup>1</sup> The Department alleged that mother had four children with father as the presumed father, who were the subject of the dependency proceedings: R.L., brother, sister, and older brother.<sup>2</sup> At the time of the petition's filing, their respective ages were:

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>2</sup> It is apparent that the various hearings in the juvenile court in this case concerning R.L. were consolidated and heard together with the dependency cases of R.L.'s older brother, sister, and brother. We refer to the relevant proceedings in reference only to R.L.'s dependency case. R.L.'s siblings share the same initials. To avoid confusion, we will therefore refer to them by their relationship to R.L.

R.L. (age 2), brother (age 5), sister (age 9), and older brother (age 11).<sup>3</sup> (The petition alleged that mother had a fifth child, A.V. (then 16, and R.L.’s half-brother), who was a dependent of the juvenile court in San Benito County.) It was alleged further that “[t]he family ha[d] a CPS history in San Benito and Monterey Counties” dating back to 2002. Mother was alleged to “suffer[] from mental health issues that impair her ability to care for the children. . . . [She was] assessed [in January 2004 as having] a borderline intellectual functioning in the range of 70-75 IQ and . . . in the range of 3[rd]-5th grade equivalent.” She had no driver’s license or employment history, and at the time of the petition’s filing she was ineligible for Housing Authority subsidized housing. Older brother, brother, and sister were each diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD). Older brother and brother also suffered from prenatal drug exposure, and sister from fetal alcohol syndrome.

In October 2002, mother’s children (excluding R.L. who had not yet been born) were removed from mother’s care and declared dependents of the San Benito County juvenile court, based upon “the mother’s substance abuse and mental health problems, issues of domestic violence with the father and subsequent neglect of the children.” In 2004, the San Benito County Juvenile Court dismissed the dependency as to brother, sister, and older brother based upon mother’s progress with respect to her recovery program. Mother had been living in Pueblo Del Mar (PDM), a transitional housing program, and had successfully completed a drug treatment program.

Since December 2004, the Department had received several referrals regarding the family; mother had been evicted from PDM because of her relapse and her allowing father to live in the home, a violation of PDM rules. Mother signed a voluntary case plan

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<sup>3</sup> At the time the court made the order that is the subject of this appeal (June 2011), the ages of the four children were as follows: R.L. (age 8), brother (age 11), sister (age 15), and older brother (age 17).

and agreed to actively participate in the McStart Program (providing special services to drug- and alcohol-exposed children) in March 2005, but was noncompliant with the voluntary plan. In April 2005, father was convicted of a drug offense and sentenced to three years in prison. The Department alleged that despite having received three years of “extensive services” from the Department and from its San Benito County counterpart, “mother continues to struggle in providing the daily structure required for these 4 children . . . . [The Department] believes the children are at substantial risk of neglect if left in the care of the mother.” On May 6, 2005, the Sheriff’s Department of Monterey County placed the four children into protective custody.

In its August 2005 jurisdiction/disposition report filed with the court, the Department presented, among other things, a detailed history of the family, specifics regarding potential developmental and emotional issues each of the four children presented, and a recommendation as to findings and orders that the court should adopt. In September 2005, the court adopted the recommended findings and orders contained in the Department’s August 2005 report. These included (1) a finding based upon clear and convincing evidence that there was a substantial danger to the physical health, safety, protection, or physical or emotional well-being of R.L. if she were to be returned home, and there were no reasonable means to assure the child’s physical health without her removal from the parents’ physical custody; (2) orders declaring R.L. to be a dependent of the court and removing her from mother’s physical custody; (3) orders granting family reunification services to mother and denying reunification services to father, who was incarcerated; and (4) approving the plan of having R.L. and sister live together in one foster home and older brother and brother live in another foster home.

## II. *Proceedings From February 2006 to August, 2010*

At the six-month review hearing, the Department reported that R.L. and sister lived in one foster home in Hollister (San Benito County), and older brother and brother lived in another foster home in Seaside (Monterey County), but that the siblings were in

frequent contact with each other. It recommended that the four children be treated as a sibling group. The Department recommended further that the juvenile court terminate reunification services to mother due to her lack of progress in addressing the issues leading to the dependency, including her testing positive for methamphetamines in September 2005, failure to attend an outpatient program, failure to follow through on counseling, failure to attend AA meetings, and making little progress on her case plan. In its February 17, 2006 order, the court adopted the recommended findings of the Department, and terminated mother's right to family reunification services.

The Department reported in June 2006 that in April, R.L. and sister were moved from their foster home in Hollister to live with their paternal grandmother and her boyfriend, who also both lived in Hollister. Although older brother and brother continued to live in a foster home in Seaside (Monterey County), they frequently visited their siblings on weekends at their paternal grandmother's home. The paternal grandmother had expressed a desire to adopt all four children. The foster parents of the two boys did not want to adopt them but were willing to become their legal guardians. The Department expressed a goal of having the paternal grandmother adopt all four children, but requested the postponement of a hearing on the selection and implementation of a permanent plan. On July 2006, the court adopted the Department's findings, including the finding that adoption was the appropriate permanent placement goal and was in R.L.'s best interest; the court continued the permanency planning hearing to January 2007.

In its January 2007 report, the Department continued to recommend approval of adoption as the permanent goal for the four children. The Department indicated that the paternal grandmother had concluded that she was not capable of taking care of all four children and no longer wished to adopt older brother and brother. Older brother wanted to continue to live with his foster parents in Seaside, did not want to live with his paternal grandmother, and did not want to be adopted. Sister indicated that if she could not return to her parents, she wanted to live with relatives but did not wish to be adopted. The

Department indicated that “[sister] and [R.L.] have formed a stronger bond since they have lived together for almost one year. The four siblings are happy to see each other when they spend the weekend together at their grandparents’ *sic* home.” The paternal grandmother reportedly wanted more time to decide whether, given health and age considerations, she and her live-in partner were capable of continuing to care for two young children. Similarly, the boys’ foster parents indicated they wanted more time to make a final decision about becoming their legal guardians, due to concerns (among other things) about “father’s unstable living situation and unpredictable behaviors” and “the role that the mother will have in the children’s lives.” The Department requested therefore that the court extend the permanency planning hearing for an additional six months “with a goal of adoption for all four children to sort out the best long-term permanent plan for each child in this very complicated situation.” The court adopted the findings and recommendations of the Department and continued the permanent placement hearing to July 2007.

The Department indicated in its June 2007 report that the paternal grandmother had been experiencing health problems and expressed doubts as to whether she could continue to care for the two girls. Sister had advised the Department that she did not want to be adopted and was ambivalent toward continuing to live with her grandmother. R.L. stated that she wanted to live with her grandmother even if sister decided to change her placement. The Department reported further that the two boys’ foster parents no longer wanted to pursue legal guardianship. Father had been arrested again in May 2007 and was awaiting sentencing. The Department also noted that older brother and brother visited their sisters two weekends per month. The Department recommended that the court order adoption as the goal for R.L. and that it set a selection and implementation

hearing for January 2008.<sup>4</sup> The court adopted the Department's findings and recommendations.

The Department noted in its December 2007 report that in August 2007, R.L. and sister were removed from their paternal grandmother's care and placed in a new foster home in Marina (Monterey County). It indicated that although she missed her grandmother, R.L. was adjusting well to her new placement. The new foster mother indicated a desire not to adopt R.L., due to the foster mother's belief that R.L. had a strong attachment to her biological family, particularly her three older siblings, mother, and grandmother. The Department observed that R.L. was "much too young for long-term-foster-care and that permanency would be more desirable." Because of her attachment to her three siblings, and the fact that R.L.'s and sister's foster mother was related to the boys' foster mother and the siblings therefore were able to spend time together frequently, the Department recommended long-term foster care as the permanent plan, which was adopted by the court in its January 2008 order.

In its December 2008 report, the Department advised that there had been no changes in the boys' and girls' respective foster care placements. Older brother had sustained a traumatic brain injury in October as a result of a physical altercation between two rival gangs. There was a recommendation that mother's visitation with the four children continue, but that supervised visitation by father be discontinued due, in part, to his having exhibited inappropriate parenting skills during hospital visits with older brother. The Department recommended further that the permanent plan continue to be long-term foster care with R.L.'s current foster family. The court issued an order consistently with these recommendations, and ordered the Department to conduct an administrative review by July 2009. In August 2009, an administrative panel did not

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<sup>4</sup> The Department recommended long-term foster care as the permanent plan for older brother, sister, and brother.

recommend any changes in the placements of any of the four children. (Only older brother's placement had changed; he had moved to Central Coast Youth Foundation Group Home in Salinas.)

The Department in its February 2010 status report noted that mother had been arrested in October 2009, had been sentenced to jail, and was scheduled to be released in August 2010. It also observed that R.L., sister, and brother often participated in activities with their respective foster families. The Department indicated that long-term foster care continued to be the permanent placement plan for R.L. The court (the Honorable Susan M. Dauphiné) adopted the findings and recommendations of the Department.

In its August 2010 administrative review report, the Department reported that sister, who had been living with R.L. in three successive foster families for approximately four years, had run away from her Marina foster home in June 2010. Her father had picked her up while she was wandering the streets of Seaside, and he reportedly choked, slapped, and kicked her; sister was taken to the hospital for evaluation and was released. Sister, along with R.L., were placed in July 2010 with a new foster family in Salinas.<sup>5</sup> This placement had the support of the girls' previous Marina foster parents. The Department indicated that adoption was the permanent placement goal for R.L., and that she was comfortable with her new foster family.

### III. *2011 Proceedings*

#### A. *February 2011 Status Report*

In its February 2011 status report, the Department indicated that the foster family for R.L. and sister had moved their residence from Salinas to Merced in October 2010. It

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<sup>5</sup> The foster mother, Linda—who was a Monterey County Department social worker—had befriended sister approximately two years earlier. Because of the status of R.L.'s foster mother as a Department employee, a Santa Cruz County social worker conducted the home assessment for sister and R.L. in August 2010, as well as the May 2011 report made pursuant to section 366.26 discussed, *post*.

reported that mother was on three years' probation for drug offenses, and that she had indicated that "she ha[d] been eight months clean . . . [and] that she want[ed] to stay that way and be a mother for her children again." She indicated that she had not had face-to-face visits with her children for some time and had missed many visits because of transportation issues. She said that she was opposed to an adoption plan for R.L. The Department was unable to make contact with father.

According to the Department, sister began having problems at school that had resulted in her receiving in-school suspensions, and did not appear to be adjusting well at home in Merced; she was moved by the Department in late December to another foster home in Monterey County. Sister had since run away from that foster home.

R.L.'s teacher reported that R.L. was doing well in elementary school (second grade), had made friends, and worked well with others. She was playing on a soccer team and "expressed her excitement [about] playing the game and meeting new people." The Department concluded that R.L. "ha[d] built a strong connection with her current foster parents." The foster parents had expressed the desire to move forward with plans to adopt R.L. When R.L. was asked on January 6, 2011, how she felt about the plan for her adoption, she replied, " 'I call my foster parents, Mom and Dad, and I really like living here with them.' " R.L. said " 'I don't know' " when she was asked how she felt about being adopted by them. When she was asked the same question two and one-half weeks later by an adoptions social worker, R.L. responded, " 'I would feel good.' " R.L. explained this response by saying that the foster parents " 'take care of [her].' " The Department recommended in its February 2011 report that the court change the current plan for R.L. to a plan of adoption with the current foster family in Merced identified as the prospective adoptive parents, and set a hearing under section 366.26.

On February 23, Judge Dauphiné adopted the findings of the Department, and ordered that placement of R.L. with her current foster family with a specific goal of

adoption would remain the permanent plan pending the selection and implementation hearing. The court set the selection and implementation hearing for May 18, 2011.

B. *May 2011 Report Pursuant to Section 366.26*

On May 5, 2011, the Department filed its report (prepared by a Santa Cruz County child welfare services social worker), pursuant to section 366.26. The Department reported that R.L. was eight years old; in good health; appeared to be developmentally on-target as compared with other children of the same age; attended second grade in Salinas; and was a good student. “Her personality, smile and dimples are very engaging.” She stated that she liked school and had many friends. R.L. “appears to have adjusted well in her prospective adoptive home. She seemed to be bonded to them and calls them ‘mom and dad.’ She smiles and says that she is happy in the prospective adoptive home. She gave the prospective adoptive mother a drawing that stated ‘I love my mom because she is so nice to me.’ [¶] In the past, [R.L.] had nightmares and woke up every night wondering where everyone was. She still worries about the whereabouts of the [prospective] adoptive parents if she does not see them. The prospective adoptive mother stated that [R.L.] is starting to feel safe in her home due to the stability and care that she has been receiving since moving in with them last July 2010.” The Department also reported that R.L., had attended three counseling sessions through a Merced child abuse treatment program, and the counselor indicated that there were no issues that required further treatment. But the prospective adoptive mother intended to take R.L. to her previous therapist in order to help her with issues such as the transition from foster care to adoption, the disruption of having several prior placements, and potential grieving over the loss of her birth mother.

The Department reported that the four siblings were fond of each other and were happy to have visits arranged between them. It noted that there had been prior attempts to place all siblings together but that “the placements were not successful due to [the children’s] individual needs, ages and behaviors.” R.L. and sister had been living in the

prospective adoptive home in Merced, but sister had requested a move in order to be closer to her boyfriend in Monterey County; sister had moved out of the Merced foster home in December 2010. The Department noted that the last visit among the siblings, which had been arranged by the adoptive mother, was on April 22, 2011. The prospective adoptive mother said that sister or older brother could call her any time and that she would make arrangements for their visits with R.L. According to the Department, “[t]he [prospective] adoptive parents are committed to ensuring the siblings maintain their relationships.” It therefore assessed that it was unlikely that R.L.’s adoption would cause substantial interference with sibling relationships, but that, in any event, “the sibling relationships do not outweigh the benefit that adoption will give to [R.L.]”

It was noted in the report that R.L. enjoyed visits with mother and that “[s]he like[d] to know about her mother’s welfare. The [prospective] adoptive parents would like [R.L.] to have contact with the mother post adoption. The extent, nature and degree of that contact will be determined by the prospective adoptive parents and will be at their discretion.” The Department noted that father was in prison and that R.L. and he had not had a visit for approximately two years. The visits were then “stopped by the Court due to the father’s adverse personality. Thus, [R.L.] does not remember much about her father and she does not ask to see him. The prospective adoptive parents will have the discretion of future contact between [R.L.] and her father.”

The Department indicated that it had assessed and rejected the possibility of R.L.’s placement with a relative because placement with any such relative was either inappropriate or would not result in R.L.’s needs being met. It was noted that mother had stated that she had been clean for one year and that she intended to ask the court for custody of her children at the next hearing.

It was noted further by the Department that “[t]he prospective adoptive parents have a loving relationship with [R.L.]” and they were very committed to her adoption plan. The couple had been married for 32 years and had three adult children. Both were

in their mid-50s, employed, and in good health. The Department assessed them as “continu[ing] to meet [R.L.’s] every[-]day needs and they are prepared to meet any special needs that may arise for her in the future. [¶] . . . All indications are that adoption by [R.L.’s] caretakers is in her best interest. However, should an unforeseen circumstance arise that makes this adoption impossible, [R.L.] remains an adoptable child. She is an attractive and outgoing child that deserves a permanent home.” The section 366.26 report recited R.L.’s favorable view toward adoption that she had expressed on January 24, 2011. On April 21, 2011, R.L. told the social worker who had prepared the report that “she would like to be adopted/live with them forever with her [caretakers whom she calls] ‘mom and dad’ [sic].”

In its report, the Department recommended that the court make findings and enter orders including that (1) R.L.’s out-of-home placement continued to be necessary; (2) the current placement of R.L. was appropriate; (3) R.L. then lived in a prospective adoptive home; (4) a prospective adoptive home had been identified for R.L.; (5) a permanent plan of adoption was appropriate and in the best interests of R.L.; (6) a likely date for the finalization of adoption was November 16, 2011; (7) R.L. should be declared free of the custody and control of father and mother; and (8) the parental rights of father and mother with respect to R.L. should be terminated.

### C. *Selection and Implementation Hearing*

At the selection and implementation hearing on May 18, 2011, the court (the Honorable Richard M. Curtis (ret.)) continued the matter for one week because of the unavailability of the Department’s attorney who had had primary involvement in the case, and the intention of father’s counsel to request a bonding study. Judge Curtis stated that he had not decided at that point whether to order a bonding study.

On May 25, 2011, father’s attorney made an oral request that the court order a bonding study. Counsel explained further that the study was needed in order to determine whether there was a sufficient bond between siblings to establish “a potential exception to

the code . . . which [exception father had] the burden to prove.” The Department opposed the request, arguing that the request was made at the 11th hour; the parent had the burden of proving the sibling relationship exception; there were other ways of proving the exception besides through a bonding study; and that in any event there was no statutory right to such a study at a parent’s request. The court (Judge Curtis) indicated that it would conduct some research concerning father’s request before deciding whether it would grant the bonding study. It therefore continued the hearing an additional week.

At the hearing on June 1, 2011, Judge Curtis, after hearing further argument, denied father’s request for a bonding study. The court acknowledged that there was a sibling bond between R.L. and sister, but that the bond was not one “of such magnitude that it should prevent the permanent plan from moving forward.” It held that the sibling bond that existed as described in the Department’s report did not “warrant [conducting] a bonding study.” The court adopted the findings recommended by the Department in its May 5, 2011 report. It ordered that R.L. would remain a dependent of the court; adoption was the permanent plan; R.L. was declared free from the custody and control of mother and father; and mother’s and father’s parental rights relative to R.L. were terminated. It set a permanent placement review hearing for November 30, 2011. Mother and father filed separate, timely notices of appeal, and the order is one from which an appeal lies. (§ 366.26, subd. (i)(1); see *In re Matthew C.* (1993) 6 Cal.4th 386, 393.)

## DISCUSSION

### I. *Applicable Legal Principles*

Section 300 et seq. provides “a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child’s welfare. [Citations.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52 (*Celine R.*)). As our high court has explained, “The objective of the 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. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

Under the statutory scheme, after a child is removed from the home, the initial attempt is made by the juvenile court, over a specified time period, to reunify the family. (*Celine R.*, *supra*, 31 Cal.4th at p. 52.) Once reunification efforts have failed—as occurred here—“[t]he state’s interest requires the court to concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order.” (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307.) The court must terminate reunification services and schedule a hearing under section 366.26 for the selection and implementation of a permanent plan for the child. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.)

As the Supreme Court has explained further, “The court has four choices at the permanency planning hearing. In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption . . . ; (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds ‘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).) The circumstance that the court has terminated reunification services provides ‘a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due

to one or more' of specified circumstances. (*Ibid.*) The Legislature has thus determined that, where possible, adoption is the first choice.” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.)

The “specified circumstances” detrimental to the child (mentioned by the court in *Celine R.*, *supra*, 31 Cal.4th at p. 53) that may serve as compelling reasons for the court’s electing not to terminate parental rights consist of six circumstances provided in section 366.26, subdivision (c)(1)(B). These circumstances are “actually *exceptions* to the general rule that the court must choose adoption where possible.” (*In re Celine R.*, at p. 53.) One such “*exceptional circumstance*[]” (*ibid.*, original italics) is where termination of parental rights would result in “substantial interference with a child’s sibling relationship . . . .” (§ 366.26, subd. (c)(1)(B)(v).)<sup>6</sup>

Under this sibling relationship statutory exception, “the court is directed first to determine whether terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.] [¶] To show a substantial interference with a sibling relationship the parent

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<sup>6</sup> “[T]he court shall terminate parental rights unless either of the following applies: [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] . . . [¶] (v) There 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).)

must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 951-952, fn. omitted.) The possible detriment to be considered is that of the child being considered for adoption, not any detriment to his or her siblings. (*Celine R.*, *supra*, 31 Cal.4th at p. 54.) Even if the “substantial interference” standard is met, the court must still balance the benefits of continuing the sibling relationship against the benefit to the child provided by adoption. (*In re L.Y.L.*, at pp. 952-953; see also *In re Megan S.* (2002) 104 Cal.App.4th 247, 252.) It is a “rare” case in which the court will find that this exception to adoption applies. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014; see also *Celine R.*, *supra*, 31 Cal.4th at p. 53 [statute permits court, “in *exceptional circumstances*” to choose option other than the preferred one, adoption].) The party asserting the applicability of the sibling relationship exception bears the burden of proof (*In re Megan S.*, at p. 252), and a father or mother whose parental rights are being threatened with termination has standing to assert the exception (*In re L.Y.L.*, at pp. 949-950).

## II. *Request for Bonding Study*

Father and mother contend that the court abused its discretion by denying father’s request for a bonding study concerning the relationship between R.L and her siblings. They argue that the court had the authority under Evidence Code section 730 to appoint an expert on the subject of sibling bonding and should have appointed an expert in this instance. We reject appellants’ challenge.

As appellants concede, the court’s decision whether to appoint an expert under Evidence Code section 730 is a discretionary one. (*In re Valerie A.*, *supra*, 152 Cal.App.4th at p. 1012; *People v. Vattelli* (1971) 15 Cal.App.3d 54, 61.) “It is within the trial court’s discretion under [Evidence Code] section 730 to determine whether an expert is needed. [Citation.]” (*Collins v. Superior Court* (1977) 74 Cal.App.3d 47, 52; see also *In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394, fn. 4 [“court is never obliged to appoint an expert to assist it in making factual” finding unless it is apparent to court that the

expert evidence is required].) “[A] reviewing court should not disturb the exercise of a trial court’s discretion unless it appears that there has been a miscarriage of justice. . . . ‘Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.’” [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; see also *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319 [juvenile court’s custody determination reviewed for abuse of discretion and will not be reversed unless it exceeds bounds of reason].)

For example, in *In re Lorenzo C.* (1999) 54 Cal.App.4th 1330, the court rejected the father’s claim in challenging a determination at a section 366.26 hearing that the court abused its discretion in failing to order a bonding study. The court held: “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. . . . [A]lthough the preservation of a minor’s family ties is one of the goals of the dependency laws, it is of critical importance only at the point in the proceeding when the court removes a dependent child from parental custody (§ 202, subd. (a)). Family preservation ceases to be of overriding concern if a dependent child cannot be safely returned to parental custody and the juvenile court terminates reunification services. Then, the focus shifts from the parent’s interest in reunification to the child’s interest in permanency and stability. [Citation.]” (*In re Lorenzo C., supra*, at pp. 1339-1340, fn. omitted; see also *In re Valerie A., supra*, 152 Cal.App.4th at pp. 1012-1013 [court did not abuse discretion in denying mother’s request for appointment of neutral observer at all sibling visits].)

Similarly, the court in *In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1084, held that the juvenile court had not abused its discretion in refusing the father’s request for a bonding study where there already existed ample evidence concerning the relationship

between the parents and child. And the court in *In re Richard C.* (1998) 68 Cal.App.4th 1191, 1194-1197 (*Richard C.*), found no abuse of discretion and rejected a due process claim where the juvenile court had denied the mother's oral (and subsequent written) motions for a bonding study, which were brought nearly two years after her sons were declared dependent children and four months after reunification services were terminated. The court explained that bonding studies were not statutorily mandated. (*Id.* at p. 1195.) Further, while it acknowledged the mother's due process right to rebut the evidence presented by the social services department, the court observed that "at such a late stage in the proceedings [the mother's] right to develop further evidence regarding her bond with the children was approaching the vanishing point." (*Ibid.*) The *Richard C.* court reasoned that the Supreme Court in *In re Marilyn H.*, *supra*, 5 Cal.4th 295, had made clear that once reunification services had been terminated, the court's emphasis was on the child's placement and well-being, rather than on a parent's challenge to a custody order. (*Richard C.*, *supra*, at p. 1196.) "Bonding studies after the termination of reunification services would frequently require delays in permanency planning. Similar requests to acquire additional evidence in support of a parent's claim under section 366.26, subdivision (c)(1)(A) could be asserted in nearly every dependency proceeding where the parent has maintained some contact with the child. The Legislature did not contemplate such last-minute efforts to put off permanent placement. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 310 ['lengthy and unnecessary delay in providing permanency for children' is 'the very evil the Legislature intended to correct'].) While it is not beyond the juvenile court's discretion to order a bonding study late in the process under compelling circumstances, the denial of a belated request for such a study is fully consistent with the scheme of the dependency statutes, and with due process." (*Id.* at p. 1197, fn. omitted.)

Here, the parents were advised on February 23, 2011, that a selection and implementation hearing would be held on May 18, 2011, with the specific goal of

adoption identified as the permanent plan for R.L. The parents had ample opportunity to request that the court appoint a person to conduct a bonding study concerning the sibling relationship. Father nonetheless waited until the day of the section 366.26 hearing to request a bonding study. At the continued hearing on May 25, 2011, father's counsel indicated that his client wanted a bonding study; counsel understood there was a bond between the siblings; a study was necessary to determine the nature and extent of the sibling bond; and counsel had the burden to establish the sibling relationship exception. When the hearing resumed on June 1, 2011, father's counsel reiterated these reasons for requesting a bonding study. The Department's counsel opposed the request.

Father's request for a bonding study was both untimely and lacking in justification. The essence of the rationale for the request was that there was a relationship between R.L. and her siblings; that relationship *might be* of a sufficient nature to warrant father's invoking the sibling relationship exception to oppose termination of parental rights; and a bonding study was needed to determine whether there was enough evidence for father to invoke that statutory exception. The bonding study request appears to have been little more than a last-minute fishing expedition. Moreover, there was ample evidence in the record—based upon reports prepared in the previous six years by Department social workers and the report prepared in connection with the section 366.26 hearing by a Santa Cruz County social worker—of the existence and nature of R.L.'s relationship with her siblings. The court could have reasonably concluded that one more report concerning that relationship was unnecessary and would only promote further delay in the permanent placement of the child under circumstances in which it was clear that she was adoptable and that there was a specific family eager to adopt her. A holding that a bonding study in these circumstances was not merely appropriate but was required would ignore the legislative mandate that once reunification is terminated, the focus is upon the child's placement and well-being. (*In re Marilyn H.*, *supra*, 5 Cal.4th 295.) The holding urged by father would also sanction last-minute efforts by parents to forestall

placement in nearly every case through unsupported requests for additional studies, irrespective of the potential detriment to the child whose placement is at issue. (*Richard C.*, *supra*, 68 Cal.App.4th at p. 1197.)

The court did not abuse its discretion in denying father's request for a bonding study. (See, e.g., *Richard C.*, *supra*, 68 Cal.App.4th at pp. 1194-1197; *In re Lorenzo C.*, *supra*, 54 Cal.App.4th at pp. 1339-1340; *In re Jennifer J.*, *supra*, 8 Cal.App.4th at p. 1084.)<sup>7</sup>

### III. *Denial of Evidentiary Hearing*

Both father and mother claim that the court improperly denied them the right to an evidentiary hearing on the issue of the potential application of the sibling relationship exception. They argue that the denial of such a hearing deprived them of due process and was prejudicial error. The claims are without merit.

Mother made no attempt to request an evidentiary hearing on the potential applicability of the sibling relationship exception. There is nothing in the record from any of the three hearings (May 18, May 25, or June 1, 2011) indicating that she requested an evidentiary hearing. Indeed, she never asserted that the sibling relationship exception to the termination of parental rights might apply.<sup>8</sup> By failing to assert the statutory exception or request an evidentiary hearing on its applicability, mother forfeited any

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<sup>7</sup> Appellants fault the court's stated reasoning for denying the bonding study request, including the court's belief that the sibling bond was insufficient to warrant a study. Irrespective of the strength of any particular reasons enunciated by the court, we conclude that it did not abuse its discretion by denying father's request for a bonding study, since we review the decision of the trial court for correctness, not any underlying reasons for that decision. (*Muller v. Fresno Community Hosp. & Medical Center* (2009) 172 Cal.App.4th 887, 906-907.)

<sup>8</sup> Mother's counsel made a formal objection at the hearing to the recommendation of adoption, but did not invoke any of the exceptions to termination of parental rights under section 366.26, subdivision (c)(1)(B) or otherwise assert a specific position.

appellate challenge she now asserts. (See *In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222 [forfeiture doctrine, under which party may not urge as a ground for reversal a matter to which no objection was made below, applies to dependency proceedings].)

It is unclear from the record whether father requested an evidentiary hearing on the sibling relationship exception. His counsel made no such request when the case was heard on May 18 or May 25. At the hearing on June 1, 2011, father's counsel, after reiterating his request for a bonding study, indicated that father had the burden of proving the statutory exception and if the bonding study did not support his position, they "probably [would not] have a contested hearing . . . ." After the court denied the bonding study request, father's counsel indicated that his client objected to the Department's recommendation that adoption be approved as the permanent plan for R.L. The court then asked father's counsel whether he was requesting a contested hearing, to which counsel responded: "Well, my client would like a contested hearing, but, obviously, this is an adoptive parent who will qualify. The issue is the connection amongst the siblings, . . . that's the core issue, and I don't think the Court is going to be willing to have me bring in these young children to . . . testify about their contact . . . ." After colloquy with the Judge Curtis over whether he would preside at future hearings, father's counsel added, "—even another judicial officer is not going to be too keen on that idea [of having the siblings testify]."

It does not appear from this record that father made a formal request for an evidentiary hearing on his apparent assertion that the sibling relationship exception applied. Assuming no request was made, father has forfeited his appellate challenge. (*In re Dakota H., supra*, 132 Cal.App.4th at pp. 221-222.) But since the issue is not free from doubt, we will address the merits of father's contention.

As father admits, a proponent of an exception under section 366.26, subdivision (c)(1)(B) is not automatically entitled to a contested hearing. The court may require an offer of proof from the proponent seeking to establish such exception. (See *In*

*re Earl L.* (2004) 121 Cal.App.4th 1050, 1053 [sibling relationship exception]; *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1120-1122 [parental relationship exception].) As the court in *In re Earl* explained, “ ‘Because due process is . . . a flexible concept dependent on the circumstances, the court can require an offer of proof to insure that before limited judicial and attorney resources are committed to a hearing on the issue, [the parent] ha[s] evidence of significant probative value. If due process does not permit a parent to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest. The [juvenile] court can therefore exercise its power to request an offer of proof to clearly identify the contested issue(s) so it can determine whether a parent’s representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses.’ [Citation.] [¶] The mother in *In re Tamika T.* relied on the strong parental relationship exception. [Citation.] We know of no reason why our *In re Tamika T.* holding should not apply equally to the sibling exception.” (*In re Earl L.*, at p. 1053, quoting *In re Tamika T.*, at p. 1122.)

It does not appear from the record that the court directly requested an offer of proof after asking father’s attorney whether he was seeking a contested hearing. Nonetheless, based upon the remarks of father’s counsel, the substance of what he intended to present at such a hearing was nothing more than unspecified testimony from the siblings, testimony which he posited the court would not allow. Thus, had the court specifically requested an offer of proof from father’s attorney in support of the sibling relationship exception, the proffer would have been inadequate to require the court to have granted father a contested hearing. Stated otherwise, under *In re Earl L.*, *supra*, 121 Cal.App.4th at page 1053, the court would have had no duty to grant a hearing where father could not specify evidence he would present in support of the exception for which he bore the burden of proof. We therefore reject father’s claim of error.

Moreover, even were we to assume there was error because, unlike the court in *In re Earl L.*, *supra*, 121 Cal.App.4th 1050, the court here did not specifically seek an offer of proof from father's counsel, any error was harmless beyond a reasonable doubt. (See *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132 [due process violation in dependency context is examined under harmless beyond reasonable doubt standard].) There is nothing in the record suggesting that father, had the court specifically requested an offer of proof, could have identified any evidence supporting the sibling relationship exception beyond the matters that were already before the court. As discussed in part IV, *post*, the trial court did not err in impliedly finding that any detriment that adoption would have upon the sibling relationship did not present a compelling reason for concluding that termination of parental rights would be detrimental to R.L. Thus, even if the court erred in failing to request an offer of proof, the error was harmless.<sup>9</sup>

#### IV. *Court's Rejection of Sibling Relationship Exception*

Father argues that the court erred in terminating his parental rights, thereby concluding that the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v) was inapplicable. He asserts that "the trial court lacked sufficient evidence to conclude that the sibling relationship did not apply." Father contends further that there was substantial evidence that R.L.'s relationship with her siblings "was so strong" that the discontinuance of contact between siblings would be detrimental to R.L. And he urges that the benefit of continuing a close relationship between R.L. and her siblings was significantly greater than the benefits of adoption. Father's argument utilizes an incorrect

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<sup>9</sup> For the first time in his reply brief, father argues that the court erred by approving the permanent plan of adoption and terminating parental rights at the June 1, 2011 hearing conducted without father being personally present. Apart from the fact that this claim was not asserted below and was thus forfeited, it is also forfeited on appeal because it was not raised in the opening brief. (*In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 214 [absent good cause, appellate court "need not consider new issues raised for the first time in a reply brief"].)

standard of review, seemingly shifts the burden of proving the exception from himself to the Department, and fails to give proper deference to the trial court. We therefore reject father's claim of error.

A. *Standard of Review*

Father contends that an appellate court reviews a juvenile court's determination regarding the applicability of the sibling relationship exception for substantial evidence. This is an incomplete and therefore inaccurate description of the proper standard of review.

As has been acknowledged by more than one court, the standard of review has varied in cases which have reviewed juvenile court decisions concerning the applicability of the statutory exceptions to the termination of parental rights, such as the sibling relationship exception. (See, e.g., *In re C.B.* (2010) 190 Cal.App.4th 102, 122; *In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) In one case, the court held that "[a] finding [that] no exceptional circumstance exists is customarily challenged on the sufficiency of the evidence. [Citations.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) But the First District Court of Appeal (Division Three) held that the abuse of discretion standard appeared to be "a better fit" than the substantial evidence standard in reviewing a determination regarding the applicability of the beneficial parental relationship exception. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

We recently held that review of a court's determination of the applicability of the parental or sibling relationship exceptions under section 366.26 is governed by a hybrid substantial evidence/abuse of discretion standard. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) As we explained, "Since the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental or sibling relationship, which is a factual issue, the substantial evidence standard of review is the appropriate one to apply to this component of the juvenile court's determination. Thus, . . . a challenge to a juvenile court's finding that there is no beneficial relationship

amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed. [¶] The same is not true as to the other component of . . . both the parental relationship exception and the sibling relationship exception[, which] is the requirement that the juvenile court find that the existence of that relationship constitutes a ‘*compelling reason* for determining that termination would be detrimental.’ (§ 366.26, subd. (c)(1)(B), italics added.) A juvenile court finding that the relationship is a ‘compelling reason’ for finding detriment to the child is *based* on the facts but is not primarily a factual issue. It is, instead, a ‘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. [Citation.] Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Ibid.* at pp. 1314-1315.)

#### B. *Whether Court Erred in Rejecting Exception*

The first aspect that a proponent of the sibling relationship exception must prove is the existence of a beneficial sibling relationship. (*In re L.Y.L., supra*, 101 Cal.App.4th at pp. 951-952.) There is no question that such a beneficial relationship between R.L. and her siblings, particularly sister, existed. From August 2005 until August 2007, R.L. and sister had lived together at two separate foster homes in Hollister. The two girls lived together at another foster home in Marina from August 2007 until June 2010, when sister ran away from home. R.L. and sister then lived with another foster family (ultimately R.L.’s prospective adoptive parents) for about five months in Salinas and later in Merced; in December 2010, sister was placed in another home (in Monterey County) because she was having adjustment problems with the foster family in Merced. There are multiple indications in the Department’s reports over the years of the closeness of R.L. and her

three siblings, including many references to visits that all of the siblings enjoyed. And the court acknowledged at the June 1, 2011 hearing that there was a bond between the two girls, citing their history of being placed in several foster homes together. Therefore, utilizing the first portion of the hybrid standard of review we enunciated in *In re Bailey J.*, “the undisputed facts established the existence of a beneficial . . . sibling relationship.” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

The second component involves the balancing of the benefits of continuing the sibling relationship against the benefits afforded to the child by adoption. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 952-953.) As stated, we review the court’s determination from this balancing effort under an abuse of discretion standard. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) We find no abuse of discretion here.

One aspect of the court’s balancing effort is the extent to which the termination of parental rights would result in “substantial interference with a child’s sibling relationship.” (§ 366.26, subd. (c)((1)(v); see *In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.) A reviewing court assessing whether adoption will substantially interfere with the sibling relationship may consider evidence that the prospective adoptive parent had indicated a willingness to allow sibling contact to continue after adoption. (*In re Valerie A.*, *supra*, 152 Cal.App.4th at p. 1014; *In re Jacob S.* (2002) 104 Cal.App.4th 1011; *In re Erik P.* (2002) 104 Cal.App.4th 395, 405.) Here, the prospective adoptive mother and father were willing to permit sibling contact. Further, although they did not plan to enter into a formal postadoption agreement concerning visitation, the prospective adoptive parents had expressly stated an interest that R.L.’s relationship with her siblings continue and had taken an active role in facilitating sibling visitation. For this reason, the Department assessed as unlikely the possibility that adoption would substantially interfere with sibling relationships. Therefore, the court did not abuse its discretion in holding inapplicable the statutory exception to adoption, based upon an implied finding that R.L.’s relationship with her siblings would not be substantially

impacted by the termination of parental rights. (See *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293 [claim that adoption would interfere with sibling relationship cannot be based upon speculation].)

Additionally, even assuming adoption would substantially interfere with R.L.’s relationship with her siblings, the court’s conclusion that adoption—the norm designated by the Legislature (*Celine R.*, *supra*, 31 Cal.4th at p. 53)—should be the choice in this instance, thereby rejecting the statutory exception under section 326.26, subdivision (c)(1)(v), was proper. As the Supreme Court has stated, under section 366.26, father has a “heavy burden” in opposing adoption. (*Celine R.*, at p. 61.) The court must balance the beneficial sibling relationship, which may “leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer. [Citation.]” (*In re L.Y.L.*, 101 Cal.App.4th at p. 951.) And as explained by another court where the evidence clearly supported the court’s conclusion that adoption was in the child’s best interests and outweighed any detriment resulting from a possible disruption to the sibling relationship: “Waiting would not bring stability to Megan and, to the contrary, could leave her within the dependency system in perpetuity. She is entitled to stability now, not at some hypothetical point in the future. [Citation.]” (*In re Megan S.*, *supra*, 104 Cal.App.4th at p. 254.)

Here, R.L. had lived in four different foster homes in six years. She was doing well in school, had adjusted well to her latest foster home, called her foster parents “ ‘Mom and Dad,’ ” and had expressed a favorable view toward adoption by her foster family. And the prospective adoptive parents had “a loving relationship with [R.L.]” and were very committed to adopting her. Under these circumstances, the benefits of R.L.’s being adopted by a specific family with whom she had lived for almost a year and with whom she had become very comfortable were manifest. As the court said in *In re L.Y.L.*, and applying it here, “Valuing [R.L.’s] continuing relationship with [her siblings] would

deprive her of the ability to belong to a family, which is not in her best interests.” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 953.)

Also instructive is *In re Jacob S.*, *supra*, 104 Cal.App.4th 1011, holding that the juvenile court reasonably concluded that any detriment to the sibling relationship was outweighed by the benefits of adoption. (*Id.* at p. 1018.) The appellate court viewed the circumstances practically, noting that, because of both “the natural rift” (*ibid.*) created by differences between two sisters as to where they wanted to live and one of the siblings had begun spending more time with girls her own age, “[w]hether this relationship continues will depend largely on whether [the one sister] wants it to, and not as much on whether parental rights are terminated.” (*Id.* at p. 1019.) Similarly, here, the most significant sibling relationship is between R.L. and her sister, who is seven years older. Although the two girls had lived together for some time in foster homes, sister had run away from two different foster homes, and had chosen to be relocated in Monterey County rather than continue to live with R.L. in Merced. The termination of parental rights would seem to have less of an impact on the sibling relationship than the dynamics between R.L. and her sister, including their age difference and differing wishes on living arrangements.

In short, this is not a case involving “*exceptional circumstances* [citation] [in which the court is permitted] to choose an option other than the norm, which remains adoption.” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) We thus find that the court did not abuse its discretion. In concluding that adoption was the appropriate choice for the permanent plan—and thereby rejecting the claim that the detriment to the sibling relationship which might result from termination of parental rights did not present a compelling reason to choose an option other than the norm—the court did not make a decision that “ ‘exceeded the bounds of reason.’ ” (*In re Stephanie M.*, *supra*, 7 Cal.4th 295, 318-319.)

V. *Motion to Withdraw of Minors' Attorney*

On May 2, 2011, Michael Cowan, the attorney of record for R.L. and her siblings, filed a document declaring that he had a conflict in his continued representation of R.L. and indicated that it would be in his client's best interests to have new counsel appointed on her behalf.<sup>10</sup> A minute order of May 4, 2011, reflected that the matter was placed on calendar, discussion was had, and the court (Judge Dauphiné), under "[o]ther orders," found "that there is no conflict and denie[d] the motion to appoint new counse[l]. Matter remains set for Selection and Implementation Hearing on May 18, 2011 at 1:30 p.m."

At the selection and implementation hearing on May 18, 2011, Cowan indicated to Judge Curtis that he had previously discussed the question of having a conflict with Judge Dauphiné. He explained that at the time of his filing on May 4, he "anticipated a future conflict. In fact, a conflict has arisen based on [Cowan's] communication with one of the siblings." Judge Curtis responded: "As I mentioned in chambers, Mr. Cowan, I don't think it's appropriate for me to get involved in [the] resolution of that issue. What I suggest you do is talk with Judge Dauphiné about it and/or all of the attorneys involved when she gets back . . . [the] week after next." Cowan responded, "Thank you," and there was no further discussion at the hearing on the conflict issue.

Father contends that the court's refusal to permit counsel for R.L. and the siblings to withdraw due to a claimed conflict constituted prejudicial error. He argues that "[t]he court gravely erred when it proceeded with the termination hearing, knowing that minors' counsel represented multiple clients who opposed the recommendation of adoption for R.L." Father asserts that the court's inaction precluded R.L.'s siblings from obtaining

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<sup>10</sup> The motion to withdraw indicated that Cowan represented R.L., but did not state that he represented R.L.'s siblings. But it appears from the hearing transcripts that Cowan in fact represented all four children.

independent counsel who could have filed a petition under section 388 to attempt to preserve their relationship with R.L. Father's claim of error has no merit.

We address initially the question of father's standing to assert the claim of error.<sup>11</sup> In *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252, this court held that a parent has standing to raise the issue of separate counsel for the parent's dependent children because "independent representation of the children's interests impacts upon the parent's interest in the parent-child relationship. [Citations.]" (Accord, *In re Clifton B.* (2000) 81 Cal.App.4th 415, 427-428, fn. 6.) Other courts, however, have held that a parent did not have standing to assert a claim of a dependent child, such as a challenge to an order concerning visitation among siblings. (See *In re Daniel H.* (2002) 99 Cal.App.4th 804, 809-810 [parent lacked standing to challenge sibling visitation issue, either directly or indirectly by asserting ineffective assistance of counsel]; *In re Frank L.* (2000) 81 Cal.App.4th 700, 702-703 [parent lacked standing to assert that children did not receive effective assistance of counsel; parent also lacked standing to challenge issue concerning minor's right to visit siblings].)

While we conclude that father has standing here under our holding in *In re Candida S.*, *supra*, 7 Cal.App.4th at page 1252, his claim nonetheless fails. At the hearing on May 18, 2011, Cowan advised the court that he believed that a conflict had arisen as a result of a "communication with one of the siblings." Cowan gave no explanation of the nature of the conflict, or whether (and to what extent) the conflict impacted his ability to continue to represent R.L. and the siblings. After the court suggested that counsel address the matter at a future time with Judge Dauphiné (who

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<sup>11</sup> Notably, no appeal was brought on behalf of R.L. or any of her siblings concerning the purported denial of their attorney's motion to withdraw, or, for that matter, challenging any of the orders arising out of the selection and implementation hearing.

ordinarily heard the juvenile court calendar), Cowan registered no objection to proceeding with the section 366.26 hearing and did not raise the issue at the two further hearings. He made no specific motion to withdraw as counsel. Under the circumstances, any request to be relieved as counsel was not preserved below by counsel for R.L. and her siblings. Therefore, it cannot be raised by father here.

Moreover, even were we to assume counsel for R.L. and her siblings adequately preserved the issue for appeal, father's claim fails. The failure to appoint separate counsel for individual siblings is subject to harmless error analysis. (*Celine R.*, *supra*, 31 Cal.4th at p. 59.) The high court explained: "Courts should strive to give the child this stable, permanent placement, and this full emotional commitment, as promptly as reasonably possible consistent with protecting the parties' rights and making a reasoned decision. The delay an appellate reversal causes might be contrary to, rather than in, the child's best interests. Thus, a reviewing court should not mechanically set aside an adoption order because of error in not giving that child separate counsel; the error must be prejudicial under the proper standard before reversal is appropriate." (*Ibid.*) The Supreme Court held that a reviewing court, applying the *Watson* harmless error standard (*People v. Watson* (1956) 46 Cal.2d 818, 836), "should set aside a judgment due to error [in a dependency proceeding] in not appointing separate counsel for a child or relieving conflicted counsel only if it finds a reasonable probability the outcome would have been different but for the error." (*Celine R.*, at p. 60.)

In this instance, Cowan did not indicate or even suggest that any of his clients would be prejudiced if the court proceeded with the section 366.26 hearing without his being permitted to withdraw as counsel.<sup>12</sup> He neither opposed adoption for R.L., nor

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<sup>12</sup> Father claims that the court erred because "it proceeded with the termination hearing, knowing that minors' counsel represented multiple clients who opposed the recommendation of adoption for R.L." This position is meritless, because it is based

(continued)

indicated a belief that any detriment to R.L.'s relationship with her siblings that might result from termination of parental rights would substantially outweigh the benefits afforded to R.L. by adoption. Accordingly, we find no reasonable probability that the court would have chosen a different permanent plan even if it had appointed separate counsel for R.L. and the siblings. (*Celine R.*, *supra*, 31 Cal.4th at pp. 61-62.)

#### VI. *Inquiry Concerning Native American Ancestry*

In its report filed pursuant to section 366.26 on May 5, 2011, the Department (through the social workers at Santa Cruz County Human Services Department) noted: "The Indian Child Welfare Act does not apply. According to Social Worker Yolanda Watson, on March 29, 2011, [mother] was provided the ICWA 020-Parental Notification of Indian Status form. [Mother] indicated that she does not have any Indian Ancestry. In addition, the father has not returned the ICWA 20 that was mailed to him on March 15, 2011 by Ms. Watson. However, his mother stated there is no Indian Heritage in her family." In addition, in a prior report filed in this case on December 28, 2007, the Department noted: "The Indian Child Welfare Act does not apply. The mother, . . . , and the father, . . . , stated that they do not have Native American ancestry on December 21, 2007."

Father asserts that the court erred in failing to make an adequate inquiry as to whether R.L. was or might be an Indian child pursuant to the Indian Child Welfare Act (25 U.S.C. § 1901 et seq. (ICWA)). He argues that under rule 5.481 of the California Rules of Court, the juvenile court and the Department have a continuing affirmative duty to inquire regarding the possible Native American heritage of a

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upon speculation; the record does not show anything about the nature of any conflict Cowan had in the continued representation of R.L. and her siblings, or that any of his clients opposed R.L.'s recommended adoption.

dependent child.<sup>13</sup> He asserts that because the Department did not procure from father a signed “Parental Notification of Indian Status (form ICWA-020)” as specified in rule 5.481(a)(1) of the California Rules of Court, and because the court did not make inquiry of father at the hearing concerning the possibility of his Native American heritage, the order arising out of the selection and implementation hearing must be reversed. We reject father’s challenge.<sup>14</sup>

Father is of course correct that the juvenile court and the Department are required to inquire whether a dependent child has Native American ancestry. (§ 224.3, subd. (a); Cal. Rules of Court, rule 5.481(a).)<sup>15</sup> But the evidence below is that such an inquiry was made, both shortly before the selection and implementation hearing and at an earlier time in December 2007. At the earlier date, the Department inquired of both mother and father, and both stated that they had no Native American ancestry. Mother confirmed

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<sup>13</sup> “The court, court-connected investigator, and party seeking a foster-care placement, guardianship, conservatorship, custody placement under Family Code section 3041, declaration freeing a child from the custody or control of one or both parents, termination of parental rights, or adoption have an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all proceedings identified in rule 5.480. The court, court-connected investigator, and party include the county welfare department, probation department, licensed adoption agency, adoption service provider, investigator, petitioner, appointed guardian or conservator of the person, and appointed fiduciary. . . .” (Cal. Rules of Court, rule 5.481(a).)

<sup>14</sup> We address father’s claim notwithstanding his failure to raise the issue below. (See *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1195-1197 [forfeiture doctrine generally does not apply to bar consideration of appellate claims concerning ICWA notices not raised in dependency proceedings].)

<sup>15</sup> “The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.” (§ 224.3, subd. (a).)

that she had no Native American ancestry in the ICWA-020 form she signed on March 29, 2011. And although the ICWA-020 form was provided to father on March 15, 2011, but was not signed and returned by him, the record does not show that the Department had any information that would have called into question either father's previous denial of Native American ancestry or the denial of any such ancestry made by father's mother to the Department. Under these circumstances, the Department and the court satisfied their respective obligations to inquire about the possibility that R.L. was or might be an Indian child.

But even if the Department or the juvenile court failed to satisfy its respective inquiry obligations, any such assumed failing would not warrant reversal of the order here. In *In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1429, the father argued on appeal that the agency had not complied with its inquiry obligations because it had not made sure that a form was filed indicating that it had asked father whether he had Native American ancestry, and that the court had never made that inquiry of him at the hearing. In addition to concluding that the duty of inquiry had been satisfied (*id.* at p. 1430), the appellate court held that any error was harmless because father had not shown that a miscarriage of justice had resulted that warranted reversal. (*Ibid.*, citing Cal. Const., art. VI, § 13.) The court explained: "Father complains that he was not asked below whether the child had any Indian heritage. Fair enough. But, there can be no prejudice unless, *if* he had been asked, father *would have* indicated that the child did (or may) have such ancestry. [¶] Father is here, now, before this court. . . . He should have made an offer of proof or other affirmative representation that, had he been asked, he would have been able to proffer some Indian connection sufficient to invoke the ICWA. He did not. [¶] In the absence of such a representation, the matter amounts to nothing more than trifling with the courts. [Citation.] The knowledge of any Indian connection is a matter wholly within the appealing parent's knowledge and disclosure is a matter entirely within the parent's present control. The ICWA is not a 'get out of jail free' card dealt to parents of

non-Indian children, allowing them to avoid a termination order by withholding secret knowledge, keeping an extra ace up their sleeves. Parents cannot spring the matter for the first time on appeal without at least showing their hands. . . . [¶] The burden on an appealing parent to make an affirmative representation of Indian heritage is de minimis. In the absence of such a representation, there can be no prejudice and no miscarriage of justice requiring reversal.” (*Id.* at p. 1431.) Other courts have similarly held that the parent claiming error due to a lack of sufficient inquiry regarding Native American heritage must show prejudice by some indication that Native American heritage does or may exist. (See *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1388; *In re H.B.* (2008) 161 Cal.App.4th 115, 122; *In re N.E.* (2008) 160 Cal.App.4th 766.)

Here, father points to nothing in the record—and makes no representation to this court—indicative of his having Native American ancestry. Therefore, any assumed error in failing to make sufficient inquiry of the father about his possible Native American ancestry does not warrant reversal.<sup>16</sup>

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<sup>16</sup> Father cites *In re Mary G.* (2007) 151 Cal.App.4th 184, in support of his position that reversal is required notwithstanding the absence of any indication that he in fact has Native American ancestry. *In re Mary G.* is distinguishable in a number of respects, including the fact that the appellate court determined that there was reversible error for reasons unrelated to ICWA (*id.* at pp. 198-208); unlike in *In re Rebecca R.*, *supra*, 143 Cal.App.4th 1426, the agency received affirmative evidence that both mother and father had Native American ancestry; and the ICWA notice was improper because it was sent to father’s tribe at the wrong address (*In re Mary G.*, *supra*, at pp. 210-211).

DISPOSITION

The June 20, 2011 order, filed after the selection an implementation hearing, approving adoption as the permanent plan for R.L. and terminating the parental rights of mother and father, is affirmed.

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Duffy, J.\*

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Mihara, J.

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\* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.