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

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

H038274
(Santa Clara County
Super. Ct. Nos. JD19758, JD19759 &
JD19760)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

J.G.et al,

Defendants and Appellants.

I. STATEMENT OF THE CASE

The parents of three dependent children—mother S.G.-R and father J.G.—appeal from an order terminating their parental rights under Welfare and Institutions Code section 366.26.¹ They claim the court erred in declining to apply the beneficial parental relationship exception to avoid termination. (§ 366.26, subd. (c)(1)(B)(i).)

We find no error and affirm the termination order.

¹ All unspecified statutory references are to the Welfare and Institutions Code.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Protective Custody for the Children

On August 17, 2009, mother took her three very young children—S.G., B.G., and K.R.—to the library to get a movie, and while there, she left 21-month-old B.G. unsupervised in the children’s play area. He wandered out of the library and into the street, where twice he was almost hit by a passing car. A bus driver rescued him and called the police. Police and later the Santa Clara County Department of Family and Children’s Services (the Department) responded and ultimately met with mother and father at the scene.

Later, police accompanied father to a converted warehouse where mother and father had been living for eight years. Inside, the warehouse had a foul odor. It was cluttered with garbage, clothing, and boxes. Mice wandered throughout. There was old food sitting around, flies everywhere, a makeshift kitchen with no sink, exposed wiring, and bottles of chemicals within the children’s reach. The lights did not work, and the toilet was not functional and filled with urine. The Department took the children into protective custody.

The Petition and Detention Hearing

On August 19, 2009, the Department filed dependency petitions for the children alleging that they were at risk due to their parents’ failure and inability to protect them. (§ 300, subd. (b).) In its report, the Department recounted the library incident and described the family’s living conditions. It stated that parents admitted having arguments in front of the children, mother suffered from depression, and she sometimes verbally abused the children. The Department also noted that father had an arrest in 2003 for domestic violence, he and mother had had two prior referrals, and mother had had eight prior referrals in a case involving her three other children with a different father. After a hearing, the court ordered the children detained and scheduled a jurisdiction hearing.

The Jurisdiction Hearing

In its jurisdiction report, the Department provided more details concerning the library incident and the unsafe and unsanitary living conditions in the warehouse. It also elaborated on mother's previous dependency case, which had resulted in the termination of her rights to three children due to her failure to interact with the children, poor parenting skills, domestic violence, drug and alcohol abuse, poor supervision, failure to cooperate with support therapists and attend programs, and failure to reunify.

Concerning the previous loss of parental rights, mother now explained that she had been overwhelmed by those children, had difficulty complying with the service plan, had suffered from domestic abuse, and had lacked family support.

The jurisdiction report noted that in April 2009, parents had been fined for converting the warehouse to a residence. Although ordered to move, they continued to live there. The Department noted that the warehouse had an unsecured side door to the outside, and B.G. often wandered outside by himself to visit his father, who worked next door. Mother admitted having difficulty supervising B.G, but neither she nor father considered B.G.'s leaving by himself to be a problem.

The report stated that when detained, B.G. had diaper rash, burns from playing with hot water, bruises from falling and tripping over the household clutter, bites from his sister S.G., and four rotten teeth. Mother said she did not know what to do about the biting. Mother complained that father did not help care for the children because he was focused on his business, and as a result she had no time for herself. Father said that mother was in charge of the children. He helped when he could but did not understand how to raise children. He believed his role was to be the breadwinner, and so he was mostly occupied with his business.

The Department noted that parents had had a stormy, explosive relationship, involving jealousy, arguments, and physical violence, especially when father drank. The police had intervened at times, and once father was arrested for domestic violence and required to attend a battering intervention program. Although his physical abuse abated,

he continued to verbally and emotionally abuse mother. Parents admitted that they exposed the children to their fights, and mother would at times verbally abuse and physically discipline them.

Father said that mother was often cranky and in a bad mood and suffered from insomnia which caused the children to stay up late with her watching movies. The Department reported that mother had a previous diagnosis of depression and mood disorders that had inhibited her ability to parent and maintain a safe and clean home.

A 1999 psychological evaluation had previously found that mother manifested symptoms of adjustment, dependent, hysterical personality disorders; she suffered mixed emotional disturbances; and she abused alcohol. The evaluation assessed mother's intellectual functioning as low with mild mental retardation. Overall, the evaluation opined that mother lacked adaptive behavioral and parenting skills and a limited capacity to appreciate her children's emotional and developmental needs. Mother's prognosis was guarded and intervention would be difficult because she had already received significant psychotherapy and parenting services but shown only limited success. An evaluation by the San Andreas Regional Center (the Regional Center) in 2000 concluded that although mother could care for herself, she could not also care for her children because of her low functioning.

In conclusion, the Department opined that mother was loving and caring but unable to provide structure for her children or identify potential safety risks. Father loved his children, was concerned for their well being, and was interested in helping them grow, but currently he had little understanding of how to be a parent and raise a child. The Department noted that the children were very attached to their parents, and all enjoyed visitation. However, parents did not know how to stimulate the children or effectively interact with them to develop their skills. Nevertheless, the Department concluded that parents were motivated to participate in services and reunify with their children.

In an addendum report, the Department stated that parents were not communicating with each other that well, but both understood the need to move from the warehouse to a more safe and suitable home and were taking steps to do so.

After a hearing on September 30, 2009, the court sustained the petition, assumed jurisdiction over the children, and scheduled a disposition hearing.

The Disposition Hearing

In its report, the Department noted that parents were participating in the services being provided. Mother had completed or was still attending a number of programs, including AA and parenting classes. Father too was attending AA. The Department observed that mother was now feeling depressed by the loss of her three older children. It also noted that she had lied about maintaining her sobriety. The Department opined that parents were committed to reunification, but it was concerned that parents were not talking to each other or working as a team, mother was drinking and minimizing health issues, and father was reluctant to move from the warehouse.

In an addendum, the Department said that mother continued to participate in AA and the parenting and domestic violence programs. Father was also attending AA and scheduled for drug abuse classes and a domestic violence program. The Department observed that parents still could not explain the unsafe and unsanitary conditions in the warehouse, and each tended to blame the other. They admitted having strong personalities that caused conflicts and a lack of communication. They also acknowledged that drinking exacerbated their problems, led to conflict, and thereby contributed to conditions in the warehouse. Moreover, father admitted that he used alcohol and sometimes got drunk. Mother's mother reported the mother continued to drink but hid her drinking from father.

The Department opined that mother's low intellectual functioning and mild retardation had prevented her from effectively parenting the older children, and continued to impair her ability to parent her younger children.

The Department noted that parents were very engaged in supervised visits, which were going well. Father was even showing some increased parenting skills. The children enjoyed the visits, and all were healthy and doing well in their foster placement. S.G., however, showed delayed development and had difficulty sleeping. B.G. was sad, withdrawn, and depressed. Moreover, he was oblivious to his sometimes dangerous conduct and thus in need of immediate intervention.

In sum, the Department believed that parents knew they had to continue with services and demonstrate an understanding of proper parenting skills. The Department was hopeful the family could reunify if parents could adequately address what had put their children's physical, emotional, and psychological health at risk in the first place and provide a home where their children were safe and could thrive. At this time, however, the Department recommended against returning the children to parents.

Before the disposition hearing, both parents completed an extensive domestic violence assessment and evaluation to determine whether they needed continued services to address a current risk of violence and/or the lingering effects of previous violence. The assessment emphasized the need for parents to address their alcohol dependence and abuse. After reviewing parents' troubled personal histories, the assessment opined that each might have undiagnosed mental health problems that affected their ability to understand and apply their parenting classes and other programs. Because both mother and father admitted being aggressive and violent toward the other, the assessment concluded that both were responsible for the violence in their relationship and at home. The assessment further found that the violent dynamic in their relationship would not diminish unless they individually changed their belief systems and learned alternative ways to deal with conflict. Although both parents suggested they could separate amicably, the assessment was skeptical and speculated that a separation might be volatile. In sum, the assessment recommended, among other things, that both parents complete an

extensive battery intervention program and that mother participate in individual counseling.

On December 9, after the disposition hearing, the court ordered removal of the children from parents and the commencement of reunification services. The court also ordered parents to participate in a variety of classes and programs directed primarily at parenting, substance abuse, and domestic violence. Mother was referred to the Regional Center.

The Six- and Twelve-month Reviews

In its six-month review, the Department reported that parents had rented an apartment, although father continued to live part-time in the warehouse. Parents were complying with their case plans. The children were still very young and demanded a lot of attention and affection. Mother was struggling to interact with them, and father depended on mother to provide nurturing. The Department was concerned that parents did not interact or communicate much with each other. During visitation, parents could not provide any structure or routine by designating a time for each child, a time to play, and a time to interact with each other, and both parents needed guidance and direction from staff during visitation. Parents also brought lots of toys, which, while fun, tended to overstimulate the children. Given parents' history of hoarding, the Department was also concerned that the new apartment was becoming cluttered with toys.

At this time, the Department recommended continued reunification services, including supervised visitation. On June 2, 2010, after the six-month review hearing, the court adopted the recommendation.

In its interim review, the Department reported that parents had moved to a cozier, more affordable cottage, and mother was pregnant. Visitation remained supervised, the children were making significant progress, and parents were nearly ready for unsupervised visits. They had stayed clean and sober and had demonstrated the will to do what was necessary to reunify. However, mother still needed additional support to grasp

and apply the parenting concepts she had been taught in class, and as a result, father had to provide structure for the children.

In its 12-month review, the Department reported that the family was enjoying unsupervised, all-day visits and were on track for weekend and overnight visits at the cottage, which appeared to be safe and sanitary. Nevertheless, mother continued to receive substantial one-on-one support from the Regional Center six to eight hours per day because it remained a challenge for mother to interact and show appropriate attachment, and she needed to have her parenting skills reinforced. For this reason, the Department expected father to assume an even more active parental role at home, especially because there would soon be a new baby. The children were happy, and all had made significant developmental progress. However, they continued to be demanding, and parents continued to need extensive support services in caring for them.

In an addendum to the 12-month review, the Department reported that father was very dedicated to reunification and interacting with the children well despite working full time, and he appeared to have assumed greater responsibility for the children due to mother's developmental and cognitive limitations.

On September 23, 2010, after the 12-month review hearing, the court continued reunification services.

Return of the Children with Family Maintenance

Regular overnight visitation commenced. The children were very attached to their foster mother and were also becoming very attached to parents, who looked forward to spending more time with them. Father had embraced his role as active father, assuming primary responsibility for the children's health and safety, and the cottage was clean and livable. The family continued to receive substantial support from service providers, including the foster mother. Mother also continued to have one-on-one support every day and had become accustomed to it. The Department planned to return the children to parents after mother gave birth. The new child, M.G., was born in December 2010. And,

on January 12, 2011, upon the Department's recommendation, the court returned the children to parents under a family maintenance plan.

In its next report, the Department opined that the first six months together had been challenging. By July 2011, the family was having financial difficulty paying rent and utilities. However, the Department helped to negotiate a rent reduction, establish a utility payment schedule, and obtain public financial aid. Mother was becoming overwhelmed as sole care provide when father was at work. She and father started having conflict over maintaining structure and a healthy routine for the children, and as a result the children were not on a regular sleeping and eating schedule, which was affecting the baby. For this reason, mother needed continued personal daily support from the Regional Center to remind her of what to do and keep her on task. Both parents needed the Department's continued support with childcare and help in providing structure and routine. The Department also noted that parents had started hoarding again, and mother was resisting the support she was getting to address it. Because the cottage was becoming hazardous and unsanitary, the Department instituted weekly inspections. The Department recommended an additional six months of family maintenance services.

In an addendum, the Department reported that parents' hoarding was becoming more of an issue. The Department had recently had to help parents collect and dispose of 40 bags of stuff because parents could not do so themselves. Parents blamed each other for the hoarding and struggled to deal with it. The Department continued its support and weekly inspections. The Department hoped that daycare for the children would alleviate parents' feelings of being overwhelmed and allow mother time and space to keep the cottage clean and stop hoarding. The Department reiterated its recommendation for six more months of family maintenance services.

On July 20, 2011, after a hearing, the court adopted the Department's recommendation.

The Children's Removal from Parents

Nine days later, on July 29, 2011, the children were taken into protective custody, and the Department filed a petition for their removal under section 387 due to the unsafe and unsanitary conditions at the cottage and parents' inability to protect the children.² On August 3, after a detention hearing, the court ordered the children removed to a shelter with parental visitation. The children were divided between two foster homes.

In its August 2011 report for the removal hearing, the Department noted that mother had received substantial daily in-home assistance, and after the children were returned, that assistance continued 12 hours per day, seven days per week. The Department pointed out that despite the help, parents continued to hoard, the cottage was cluttered with bags, garbage, dirty diapers and soiled clothing, old food, flies, exposed electrical cords, and cleaning chemicals accessible to the children. Mother had to be reminded to bathe the children, change diapers, and supervise and feed the children properly, and she was allowing the children to play outside by themselves near a busy street. The Department reported that B.G. had pushed M.G.'s stroller into the street, and when mother failed to react, the support person had to intervene. Mother was also holding the new baby in a dangerous and inappropriate way. She could not control the children's behavior, they fought and bit each other, and some were hurting themselves. Mother failed to respond properly or even show empathy. Increasingly, mother relied on staff to provide appropriate supervision and care. During this time, father was not at home much and failed to support mother or otherwise provide for the children's needs. The Department asserted that father blamed mother for the hoarding and unsafe and unsanitary conditions at the cottage even though he too contributed to it. Moreover, he failed to assume personal responsibility and take action to improve conditions, he did not follow through with appointments, and he laughed when asked for an explanation.

² The Department filed a separate petition under section 300 concerning the baby M.G., and this appeal does not involve parental rights concerning M.G.

According to the Department, mother acknowledged the unacceptable conditions at home but said she was too overwhelmed and had done all she could. She blamed father for not helping her more. The Department opined that mother did not understand how her hoarding affected the children and had undermined her ability to provide for their needs. The Department asserted that it was difficult for mother to apply any of the skills she had apparently learned in class. Father acknowledged that he had not helped mother more. The Department observed that parents loved their children, they acknowledged their responsibility, and they remained motivated to comply with the family maintenance plan. The Department also noted that the children were doing well in their placement.

In a November 2011 addendum, the Department reported that the children were in good physical and emotional condition, and mother and father were enjoying separate, weekly visitation. However, mother still needed prompting for basic skills, such as when to change diapers. She also sneaked improperly stored breast milk to visitation despite being warned against doing so. Moreover, both parents overfed the children with snack food, and the children were having stomach problems because of it. The Department further reported that mother had been evicted from the cottage and was living with father in the warehouse. Father acknowledged that conditions inside the warehouse were unsafe and unsanitary, but he refused to move to a new place until the children were returned.

The Department averred that despite the reunification services during her first dependency case and the far more extensive, personal daily services during this case, mother was still unable to identify the basic risk factors that had necessitated the removal of all of her children. Moreover, despite the years of services, the prompting and guidance of support staff, and the completion of various parenting classes, mother could not provide appropriate parenting. She could not maintain her own personal hygiene, keep a clean home, or finish tasks. Rather, she watched TV for long periods of time and did not interact with the children unless reminded to do so. She ignored obviously unsafe

and dangerous conditions in the home. She hoarded. She failed to prepare healthy meals or feed the children on a regular basis. She did not store food properly and refused to dispose of rotten food. She was unable to supervise the children or provide care for their injuries even after being taught. She had declined needed medical attention, canceled the children's medical appointments, and ignored the advice of her in-home service provider.

In short, the Department opined that even after mother's 18 months of extensive, one-on-one support, her intellectual disabilities continued to compromise her capacity to adequately and consistently meet her children's needs, she still lacked basic parenting skills, and her unsafe and unsanitary habits posed an ongoing risk to her children.

The Department further opined that despite the extensive services and programs, father had failed to show a consistent ability to take responsibility for his children's care and interact with them. He continued to blame mother for the conditions at home and failed to acknowledge his own contribution to the hoarding problem and the unsafe and unsanitary conditions. He also failed to help mother establish any kind of structure and routine for the children and had failed to demonstrate an understanding of and ability to implement basic parenting skills.

In sum, the Department recommended that the court sustain the removal petition and schedule a permanent plan hearing under section 366.26.

After a hearing on December 2, 2011, the court sustained the petition, maintained a visitation schedule, and set a hearing to adopt a permanent plan.

The Section 366.36 Hearing

In its report, the Department recommended terminating parental rights and freeing the children for adoption. It reported that the children were healthy, bright, energetic, educationally and developmentally on target and highly adoptable. They were now living

together in the same foster home and had bonded well with the foster caretakers, who were able to meet their needs and very motivated to adopt them all.³

The Department reported that parents continued to have weekly visits, but all of the children had manifested separation anxiety from the foster caretakers. S.G., now five, said she loved her new home, called the caretakers “mommy and daddy,” and had at times resisted visitation even when assured that she would be able to return to her foster caretakers. B.G, now four, and K.R., now two, had cried when dropped off by the foster caretakers for visitation and had at times refused to get out of the van.

The Department, however, noted that the children greeted and hugged mother. Usually, B.G. and K.R. went directly to toys and began playing. Mother was not vocal during visits but was tender and physically loving. The children also greeted and hugged father but spoke very little to him. He was more vocal than mother and engaged the children physically.

The Department concluded that although mother and father had completed their case plan, they had failed to internalize and demonstrate adequate parenting ability and were unable to identify the basic factors that put their children at physical and emotional risk. Moreover, despite extensive reunification services for the maximum period and intensive support, they had twice had failed to provide a safe and sanitary home for the children.

In a subsequent report responding to mother’s request for the return of her children with additional family maintenance services, the Department reiterated its recommendation for adoption. The Department summarized mother’s and father’s history as parents, the conditions that led to the initial detention and the more recent removal of the children, and parents’ failure despite extensive services to demonstrate

³ The report noted that the foster caretakers had been married for 10 years, and they had a four-year-old child. The foster mother was a physician, who had been adopted; the foster father was a computer engineer. Both had large loving families.

basic parenting skills or maintain a safe and sanitary home. The Department described the filthy and dangerous conditions inside the warehouse and attached numerous photographs. The Department further noted that despite extensive help dealing with the issue, mother continued to hoard objects and rotten food, felt comfortable living in the warehouse, and wanted to stay even though she had been advised that it was an unsafe, unsanitary, and inappropriate place for children.

The Department further explained that, contrary to statements in mother's request for the return of her children, mother's mother had not moved in with mother and could not provide full time child care because she worked five days per week. Moreover, mother's mother had no intention of moving into the warehouse and was estranged from mother.

At the permanent plan hearing on May 10, 2012, the Department submitted the matter without argument based on its reports. The court then accepted very brief offers of proof from counsel as to what mother and father would testify. Mother's attorney said that mother had consistently visited her children. She described mother's conduct during visitation and asserted that mother loved each child but felt most bonded with S.G. Father's attorney said that father loved his children very much, he wanted to raise them, and he would have his sister come from Mexico to help raise them and monitor mother.

Mother's attorney then argued against termination and asked the court to find that the children would benefit from a continued parental relationship with her. Mother's attorney noted that mother had been consistent with visitation, asserted that the children knew mother the best and had a bond with her, and opined that mother would be devastated if she were unable to see them. Father's attorney joined the comments of mother's attorney. She further stated that father had a very strong emotional bond with the children and was offering a workable alternative to termination—i.e., having his sister move in and help raise the children.

Counsel for the children agreed with the Department's analysis and recommendation and requested termination of parental rights. She noted that the children were doing well and had bonded with their foster caretakers, who were able and willing to adopt them all. She argued that the beneficial parent relationship exception to termination did not apply.

The court acknowledged that mother and father were "very good people" who had done the best they could do under the circumstances. Nevertheless, having considered the reports and the attorneys' presentations, it found no basis to apply an exception to termination. Accordingly, it found that the children were adoptable and terminated mother's and father's parental rights.

III. DISCUSSION

Parents contend that the court erred in not applying the beneficial parent relationship exception to avoid terminating their parental rights.⁴

A. The Statutory Framework and Standards of Review

" 'Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.' [Citation.] 'A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.' [Citation.] It is designed to protect children's 'compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.' [Citation.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53 (*Celine R.*))

⁴ The Department argues that father forfeited his claim by failing to argue the exception below. (See *In re Lorenzo* (1997) 54 Cal.App.4th 1330, 1339.)

The record reveals that mother's attorney expressly invoked the exception. Father's attorney followed immediately, saying, "We would echo the comments of counsel." Father's attorney then went on to argue that father had maintained visitation, established a strong bond with his children, and now offered an alternative to termination.

Under the circumstances, we find that father preserved a claim that the exception applied.

At the section 366.26 stage of a dependency proceeding, adoption is the preferred choice. (*Celine R.*, *supra*, 31 Cal.4th at p. 49; § 366.26, subs. (b) & (c).) Section 366.26, subdivision (c), provides in pertinent part: “If the court determines, based on the assessment provided as ordered under [applicable statute], and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court *shall* terminate parental rights and order the child placed for adoption.” (Italics added.)

“If it is likely the child will be adopted, the court must choose that option—and as a result terminate the natural parents’ parental rights—unless it ‘finds a compelling reason for determining that termination would be detrimental to the child due to one or more’ of specified circumstances. (§ 366.26, subd. (c)(1).)” (*Celine R.*, *supra*, 31 Cal.4th at p. 49.) “The specified statutory circumstances—actually, *exceptions* to the general rule that the court must choose adoption where possible—‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.] At this stage of the dependency proceedings, ‘it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home.’ [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Id.* at p. 53, italics added.)

Section 366.26, subdivision (c)(1)(B)(i) establishes an exception to the adoption preference where the court finds, by substantial evidence, that “[t]he parents [or guardians] have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*Ibid.*, italics added.) The parent bears the burden to show that termination would be detrimental to the child under this two-pronged exception. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164, *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*); see Evid.Code, §§ 110, 115, 190, 550.)

On appeal after a court has rejected a parent’s effort to establish the exception, two different standards of review come into play.

Since the parent must first show the existence of a beneficial parental relationship, which is a factual issue, we uphold a court’s express or implied finding that there is no beneficial relationship if supported by substantial evidence. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*) More specifically, a challenge to a court’s failure to find a beneficial relationship amounts to a contention that the “undisputed facts lead to only one conclusion.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1529.) Thus, unless the undisputed facts established the existence of a beneficial parental relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.)

The second requirement for the exception is that the beneficial parental relationship constitute a “*compelling reason* for determining that termination would be detrimental.” (§ 366.26, subd. (c)(1)(B), italics added.) Although grounded in the facts, the court’s determination on this issue is 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.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

1. Existence of a Beneficial Parental Relationship

“The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.) “Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent

results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Evidence of “frequent and loving contact” is not sufficient to establish the existence of a beneficial parental relationship. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.)

Here, the court implicitly concluded that parents had failed to establish a beneficial relationship. In claiming error, father cites the December 2010 jurisdiction report in which the Department observed that S.G. and B.G. cried when visitation was over. He cites the January 2011 interim review report in which the Department observed that during the period of overnight visitation, the children had become “very attached to both the birth parents as well as their foster mother.” Last, father notes that after the children were removed a second time due to unsafe and unsanitary living conditions, S.G. asked the social worker why she had not been able to return home.⁵

The facts cited by father are undisputed. However, they must also be viewed in light of the entire record.

It is undisputed, and the record shows, that parents had frequent and loving contact with their children. However, the record further reveals that the children were first removed when they were very young: S.G. was three; B.G. was 21 months; and K.R. was three months. At that time, the children were forced to live in an unsanitary home, exposed to hazardous conditions and materials, and suffered from a lack of adequate care

⁵ In her brief, mother adopts father’s argument that the court should have applied the exception. (See Cal. Rules of Court, rule 8.200(a)(5).) Mother adds nothing to that argument and simply asserts that if this court reverses the termination order as to father, it must also reverse the order as to her. (See *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 110-111; Cal. Rules of Court, rule 5.725(a)(2).)

and supervision, all of which can be attributed to parents' lack of attention to their basic needs. By the time of the last hearing, the children had spent over two years in foster care, amounting to a third of S.G.'s life; almost half of B.G.'s life; and almost three-quarters of K.R.'s life.

With this in mind, we note that parents needed and received substantial training to learn proper parenting and support during the periods of reunification and family maintenance. Indeed, mother had received services in her previous dependency case, and yet the reasons she lost rights to her older children were the same that threatened her rights to the younger children. Moreover, the Department's numerous reports chronicled deficiencies and problems in how mother and father dealt with and related to the children during visitation. Clearly, everyone enjoyed the visits. However, the Department observed that parents did not stimulate or effectively interact with the children to help them develop. At other times, parents overstimulated the children with too many toys and overfed them. Parents also failed to provide any structure or routine during visitation by designating separate times to be with each child, a time to play, and a time for everyone to interact with each other. The Department observed that sometimes, it was a challenge for mother so show appropriate attachment. And at times, it appeared that neither parent grasped the needs of the children or were able to demonstrate an understanding of parenting skills or any ability to apply those skills despite the classes they completed.

Later, after the children were returned, parents continued to need extensive daily support services. Nevertheless, mother quickly became overwhelmed, father failed to help her, and neither was able to provide structure and a healthy daily routine for the children or control them. As a result the children were not on a regular sleeping and eating schedule, and this was now affecting the newborn baby M.G. Moreover, parents were unable to maintain a safe and sanitary home, and the conditions there deteriorated due to parents' habits, hoarding, and neglect, all of which put the children at risk.

Moreover, instead of alleviating the unsafe, unsanitary, and hazardous conditions, parents blamed each other.

Finally, we note that during the period after the children's second removal, the children began to show separation anxiety when leaving their foster parents and were at times reticent, if not, resistant to visitation with parents.

When viewed in light of the whole record and the relevant factors, the undisputed evidence cited by father does not, in our view, "lead to only one conclusion" that the children enjoyed a beneficial relationship with their parents. (*In re I.W.*, *supra*, 180 Cal.App.4th 1517, 1529.) Stated differently, despite consistent visitation and a loving relationship, substantial evidence supports the court's implicit finding that by the time of the last hearing, a *beneficial* parental relationship did not exist.

B. Discretionary Balancing of Interests

In addition to establishing a beneficial parental relationship, parents also had to convince the court that the relationship constituted a "compelling" reason not to terminate parental rights. (§ 366.26, subd. (c)(1); *Celine R.*, *supra*, 31 Cal.4th at p. 49.) This prong has been interpreted to mean those situations where "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

The court here implicitly concluded that the benefit of the parental relationship and the detriment from severing it did not outweigh the benefits of termination and

adoption. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) We review this balancing determination for abuse of discretion. (*Ibid.*)

Given the overwhelming evidence that the children were adoptable, the court was required to terminate parental rights unless there were exceptional, compelling circumstances not to do so.

We need not reiterate in detail the evidence concerning whether the parents' relationship with the children promoted their well-being. The Department's reports taken together starkly reveal that despite the parenting programs and extensive one-on-one guidance and support during visitation and the family maintenance period, mother and father could not show a meaningful and consistent appreciation of their children's basic needs; demonstrate the ability to maintain a safe, secure, healthy environment and protect their children from harm; or show a capacity to work together as a team to promote the children's physical, educational, and emotional growth and development.

The reports also reveal that the children had always adjusted well to foster placements. In their last concurrent placement, they had become very attached to foster caretakers. They were safe and healthy, and they were thriving emotionally, physically, and educationally, and the foster caretakers were motivated to adopt them.

“[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.’ [Citations.]” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; see *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].) Stated differently, a proper exercise of discretion is “ ‘neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with the spirit of the law, and in a manner

to subserve and not to impede or defeat the ends of substantial justice. [Citation.]’ [Citation.]” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.)

Given the record here, we do not find that the court’s balancing determination—that maintaining the parental relationship outweighed the benefits of adoption for these young children—was arbitrary or capricious, that it exceeded the bounds of reason, or that it impeded the ends of substantial justice. Rather, we conclude that the court’s decision reasonably reflects an exercise of discretion guided by and in conformity with the applicable legal principles and the spirit of the law. (See, e.g., *Bailey J.*, *supra*, 189 Cal.App.4th 1308, 1316-1317; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1416-1419.)

IV. DISPOSITION

The order termination mother’s and father’s parental rights is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.