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

In re A.O. et al., Persons Coming Under the
Juvenile Court Law.

H039203
(Santa Clara County
Super. Ct. Nos. JD20302, JD20303)

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

Plaintiff and Respondent,

v.

A.O. et al.,

Defendants and Appellants.

I. INTRODUCTION

In this juvenile dependency matter, separate appeals from the juvenile court's orders terminating parental rights and selecting adoption as the permanent plan pursuant to Welfare and Institutions Code section 366.26¹ have been filed by A.O., the mother of the dependent children; J.O., the father; and the children, AL. and L. Appellants contend that the court erred in failing to select guardianship with visitation by mother as the permanent plan under the parent/child relationship exception to the statutory preference

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

for adoption. (§ 366.26, subd. (c)(1)(B)(i).) For the reasons stated below, we conclude that the juvenile court did not abuse its discretion and therefore we will affirm the orders.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Juvenile Dependency Proceedings

Our summary of the prior juvenile dependency proceedings in this matter is taken from our opinion in *A.O. v. Superior Court* (June 8, 2012, H038062) [nonpub. opn.] of which we take judicial notice. (Evid. Code, § 452, subd. (d)(1).)²

1. Detention

In September 2010 mother and father were arrested after fleeing the scene of two hit and run accidents in Santa Clara County, and their children, seven-year-old AL and four-year-old L., were taken into protective custody. At the time of the accidents, mother was driving with the entire family in the vehicle and the children were not properly restrained. AL was sitting on a loaded handgun (later determined to be inoperable) before father placed it under the rear passenger seat where the children were sitting. Father was a member of a Fresno gang, and he and mother had fled their residence in Fresno County because they believed they were being threatened by others with guns.

Both parents had a history of substance abuse. Father tested positive for methamphetamine at the time of his arrest, and mother admitted to previously using methamphetamine. At the time of mother's arrest, she had cuts and bruises on her arms and back, a scratch on her forehead, a puncture wound on one arm, and a laceration on her arm that was consistent with a stab wound. Mother later acknowledged domestic abuse in her relationship with father.

Mother was convicted in January 2011 of felony carrying a concealed firearm in a vehicle, two counts of misdemeanor child endangerment, and two counts of misdemeanor

² On the court's own motion, this court also took judicial notice of the record filed in *A.O. v. Superior Court*, *supra*, H038062.

hit and run. Father was convicted of felony carrying a concealed firearm in a vehicle and several misdemeanors, including child endangerment, resisting arrest, exhibiting a firearm, and possession of drug paraphernalia. Mother told a social worker in January 2011 that she intended to ask the criminal court to allow her to serve her full eight-month sentence, so that her release would coincide with father's release.

2. Jurisdiction/Disposition

In February 2011 the Department filed second amended petitions under section 300, subdivisions (b) [failure to protect], (d) [sexual abuse], (g) [no provision for support], and (j) [abuse of a sibling], as to both children. The children's caregiver at the time reported to a social worker that AL. and L. had disclosed sexual abuse by father.

Mother was released from custody in early April 2011. The juvenile court ordered visitation with mother to occur in a secured setting at the Department in the presence of a sheriff's deputy and that the sheriff's deputy search her prior to each visit. The Department's jurisdiction/disposition hearing report and addendums recommended that the children continue in an out-of-home placement and that the parents receive family reunification services.

In the jurisdiction/disposition report, the social worker assigned to the case stated that mother and father had been in a relationship for over ten years, and that there was a history of domestic violence perpetrated by father. He was convicted in 2004 for inflicting corporal injury on mother after stabbing her twice in the back with a screwdriver. Although both parents denied domestic violence, AL. reported that father hit mother. AL. also reported that father had told her on one occasion to point a gun at mother and shoot her. AL. was scared and did not comply.

The social worker reported that the children had suffered other abuse. AL. and L. had disclosed that father and mother tied the children up and hit them with a belt, a rope, or a hand. AL. had disclosed to several people, including her foster mother, her therapist, the social worker, and the police, that father touched her vaginal area. L. had

acknowledged to the social worker, among others, that father touched her vaginal area. The children had also witnessed mother and father having sex, and the children had seen pornography. When the social worker asked mother about sexual abuse of the children, mother indicated that she did not know it was occurring and did not believe it.

In April 2011 the jurisdiction/disposition hearing was held. At the hearing, the second amended petitions were further amended, and the section 300, subdivisions (g) and (j) allegations were dismissed. The juvenile court found the allegations in the newly-amended petition true and that the children were dependent children of the court within the meaning of section 300, subdivisions (b) and (d). The court ordered that the children be placed in a foster home and that both mother and father receive reunification services. The court also ordered supervised visitation for each parent of a minimum of two hours two times per week. The order further stated that each parent's visits were to occur separate from the other parent, each parent's visits were to take place in a secured setting and in the presence of a sheriff's deputy, and each parent was to be searched by the deputy prior to the visit.

3. Termination of Reunification Services

After mother's release from jail she actively participated in reunification services. However, her social worker believed that mother "continue[d] to minimize the risk that [father] presents to the children and herself." When the social worker asked mother whether it was possible that the children were sexually abused by father, mother stated "it is not possible."

Father was released on parole in May 2011, but violated parole that same month and was arrested. At the time of his arrest, father was with mother and less than one-half mile from where mother's visits with the children took place. Mother told the social worker not to think that they were "plot[ting] to kidnap the girls." Criminal charges were thereafter filed against father for continuous sexual abuse of a child and lewd acts on a child, along with a multiple victim allegation.

In the meantime, AL. and L. continued to live in the same foster home and the social worker reported that they had bonded with their foster family. The social worker stated that it was “imperative” that mother’s visitation remain supervised and that the presence of law enforcement was “critical to ensure the children’s physical and emotional safety.”

The Department’s addendum report for the November 2011 early resolution conference included the social worker’s recommendation that the parents continue to receive family reunification services. Mother’s therapist had reported to the social worker that mother “minimized the issues involving the children entering” the dependency system and mother had an “ ‘emotional dependency’ ” on father. The social worker again stated that it was “imperative” that mother’s visits with the children remain supervised and that the order requiring the presence of law enforcement was “critical to ensure the children’s physical and emotional safety.” The social worker was concerned about the risk that the parents would abduct AL. and L.

After father was transferred to Fresno County jail in August 2011, mother had a substantial amount of contact with him. In November 2011 alone, there were approximately 123 calls between the two, totaling more than 2,285 minutes. In recorded calls between October and December 2011 mother and father repeatedly expressed their love for each other, discussed apparent plans to leave the area, and discussed what mother should say to others. For example, one call included a discussion about mother saying what people wanted to hear, such as that she is not dependent on father. In a different call, father asked whether mother had told the children that he loved them, and she responded affirmatively. In addition to the parents’ contact by telephone, between October and November 2011 mother attempted three times to mail to father photographs of nude female body parts. The jail returned the photographs to mother. As of early January 2012, father was still in custody and awaiting trial.

In January 2012 the Department recommended that reunification services be terminated for both parents and that a section 366.26 hearing be set for AL. and L. At that time, mother's therapist stated in a letter that mother did not believe that father had molested the children and mother felt that father "the only 'reliable person in her entire life.'" In recommending termination of reunification services, the social worker explained that, although mother had participated in some of her case plan activities and there was a "reciprocal emotional connection" between mother and children, mother "continues to make choices that suggest that her emotional dependence on [father] is above any other situation in her life." The social worker believed that father "gives specific directions to [mother] and she complies with them despite the possible consequences to her, such as violating the probation rules by visiting him." Further, the social worker found that mother "compartmentalizes" the issues between father and herself and her relationship with the children, and that mother "continues to believe [father] is not a risk factor to her or their children." The social worker requested that visitation remain supervised with law enforcement present, due to continuing concerns about the children being abducted by the parents.

After a contested review hearing held in March 2012, the juvenile court found by a preponderance of the evidence that return of the children to the parents would create a substantial risk of detriment to the children's safety, protection, or physical or emotional well-being. The court also found by clear and convincing evidence that the Department had offered reasonable services to mother. The court adopted the findings and orders, including the termination of reunification services, proposed by the Department, and set the section 366.26 permanency planning hearing for July 12, 2012. With respect to mother's visitation, the court ordered that the same restrictions, including the presence of a sheriff's deputy, remain in place, and specified that the social worker had the discretion to allow for visits without a sheriff's deputy, "if deemed appropriate, without further court order."

The mother challenged the juvenile court's order terminating reunification services and setting the section 366.26 permanency planning hearing by filing a petition for a writ of mandate in this court. This court denied the petition in an opinion filed in June 2012. (*A.O. v. Superior Court, supra*, H038062.)

B. Permanency Planning Hearing

The section 366.26 permanency planning hearing was continued to December 12, 2012. On that day, the juvenile court denied the mother's request for a bonding study. At the time of the hearing, AL. was nine years old and L. was seven years old.

The Department submitted a section 366.26 report and mother submitted a trial brief in conjunction with the hearing. The evidence included documentary evidence and witness testimony, as summarized below.

1. Section 366.26 Report

The Department's social worker, Elizabeth Espinoza, filed a section 366.26 report on December 12, 2012, that included the Department's recommendations that the juvenile court terminate the parental rights of mother and father and select adoption as the permanent plan for AL. and L.

In the permanency planning assessment portion of the section 366.26 report, Espinoza reported that AL. was "developmentally on target." AL. had lived in the same foster home with her younger sister, L., since they were removed from their parents in 2010. At school, AL. was in the third grade and at or above grade level standard in all subjects except mathematics. L. was also "developmentally on target." She was at grade level in all subjects at school and had made great progress in her social skills.

AL. and L. have attended individual therapy with Lorena Gonzalez, LCSW since early 2011. When the therapist asked AL. to draw a portrait of her family, AL. drew only the members of her foster home. In March 2012, the current foster parents asked to become the concurrent home (a home where the foster parents are the potential adoptive

parents) after AL. and L. had a difficult time with a transition to a different prospective adoptive home.

Mother began visiting AL. and L. in April 2011 after she was released from custody. Her visits have been consistent, twice a week for two hours each visit. All visits have been supervised with a law enforcement officer present. Father has not visited, since he has been in custody and his parole conditions prohibit contact with children. Espinoza observed that during mother's visits, mother "engages the children in conversation and in age appropriate activities." Mother also helped them with their homework, brushed their hair and teeth, and provided food and arts and crafts projects. She also set limits on the children, such as giving one girl a time-out when she kicked her sister. Both AL. and L. reported to their therapist that that they had fun during their visits with mother, and that she was "attentive to them and brushes their hair."

For several reasons, Espinoza recommended that adoption be the permanent plan for AL. and L.: (1) the girls are "approachable and loveable"; (2) "[i]t is imperative" that they be placed together due to their sibling connection; (3) the foster parents have completed the adoption home study and have been approved; (4) AL. and L. turn to the foster parents for comfort; (5) both girls have a "strong connection" with their foster family; (6) both girls refer to their foster siblings as their brothers and sisters and to the foster parents as " 'mom and dad' "; and (7) the foster parents have met the children's basic needs for food, clothing, shelter, health, emotional support, and education and ensured that they received supportive services.

Further, Espinoza determined that adoption would provide the most stable placement, noting that both girls' behavior has improved significantly since they were placed in the "safe environment" of the foster home, which has been conducive to their "emotional healing." She also determined that "[t]he primary connection for both girls has been with their current prospective foster/adoptive parents. There is a strong bond

with the prospective foster/adoptive parents as evident by their symptoms of emotional distress when they began the transition to move to another foster home.”

Although Espinoza acknowledged that AL. and L. “have had a positive and healthy experience during their visitation with [mother],” she believed that the highly structured and secure nature of the visits had ensured the girls’ physical and emotional safety and contributed to their positive experience. Espinoza acknowledged that if visitation with mother was terminated, “it is possible that the children will experience feelings of sadness. This is a typical reaction of children their ages terminating a relationship with a biological parent or any adult they have attached with who has been consistently visiting.” She anticipated that the girls would continue individual therapy to address issues of grief and loss with respect to their mother.

2. Mother’s Trial Brief

Mother submitted a trial brief in which she opposed the Department’s recommendation that adoption be the permanent plan for AL. and L. She stated that she intended to present two expert witnesses who would testify that adoption is not in the girls’ best interest because they have a beneficial bond with mother. Mother also asserted that she continues to parent AL. and L. and she is more than a “ ‘friendly visitor.’ ” In mother’s view, “[s]evering the mother-daughter relationship would cause irreparable harm and [the relationship] does outweigh the benefit of adoption.”

3. Documentary Evidence

Dr. Kuo’s Assessment

Anlee Kuo, M.D., a psychiatrist retained by mother, provided a written assessment of the relationship of AL. and L. with their mother, dated October 5, 2012. After reviewing the court record pertaining to this case, interviewing the girls and their mother, observing one supervised visit, and speaking with the girls’ therapist and mother’s retained social worker, Lisa Slater, Dr. Kuo concluded that (1) there was “a beneficial bond” between the girls and their mother; (2) abrupt termination of their relationship with

their mother “would be detrimental to the developmental trajectory of these girls”; (3) the girls “need the ongoing stability of living with their foster family and seeing their mother in a safe setting”; and (4) social worker Espinoza “significantly underestimates the impact of this severing of the relationship with their mother.”

Lisa Slater’s Assessment

Slater is a social worker employed by the Office of Dependency Counsel (the law office of mother’s attorney). She submitted a written assessment “regarding the nature of the bond between the mother . . . and her children, [AL.] and [L.],” dated October 31, 2012. Slater reviewed the Department’s reports in this case, as well as service logs, letters from the girls’ therapist, school reports, and all reports and documents from other professionals. She also observed nine hours of supervised visitation between mother and the children.

Slater concluded “that there is a beneficial bond between the mother and her children . . . and that terminating this relationship will have a detrimental effect on [their] development with a high likelihood of serious behavioral problems as each child enters into puberty.” (Italics omitted.) Her conclusion was based on the strength of the bond; the children’s response to the biological mother as their mother, whom they love; the children being upset by prospect of not seeing their mother; and the mother having a significant role in maintaining the children’s sibling relationship.

Report of Court-Designated Child Advocate

The court-designated child advocate for L., Karen Leonard, submitted a report dated July 12, 2012. Among other things, Leonard recommended that L. “remain in her current placement, with the hope that her current foster parents will adopt [L.]. She is well satisfied with her current placement.” Leonard also stated: “Now that the girls know they will be staying in their current placement indefinitely, I believe they will thrive under the stability and consistency maintained in the home.” Regarding visitation,

Leonard reported that L. “is having regular supervised visits twice weekly with Mom. These visits should decrease gradually. [L.] enjoys the visits with her Mom.”

Leonard further stated: “I encourage continuing the weekly sessions with her therapist and am trying to make attendance more consistent. I have seen improvement in [L.]’s behavior and attitude following therapy sessions. The Therapist will be able to help [L.] cope if and once the visits with her biological mother become less frequent and eventually cease. That will be very difficult on both girls and they will need a professional to help them cope.”

4. Witness Testimony

Dr. Kuo

Dr. Kuo testified on behalf of mother as an expert in the areas of clinical and forensic psychiatry and issues relating to attachment. In her opinion, mother is the “primary attachment figure” for AL. and L. Dr. Kuo acknowledged that AL. and L. were attached to their foster family, and “their emotional needs [were] met there in terms of stability, security and consistently in their life, and it allow[ed] them to feel safe and comfortable.” The girls’ ability to form an attachment with their foster family is due, according to Dr. Kuo, to their earlier attachment to their mother. She believes that the girls can be attached simultaneously to mother and the foster family.

It is Dr. Kuo’s opinion that if AL. and L. are not allowed to see their mother again, they will suffer significant emotional detriment. However, Dr. Kuo agreed that AL. and L. both suffer from post-traumatic stress disorder, were “exposed to complex trauma while in the care of their parents,” and would feel “some anxiety and stress in their relationship with their mother.” Although Dr. Kuo knew that mother has denied that either she or father physically abused the children, and also knew that mother has denied that father sexually abused the children, that knowledge did not alter Dr. Kuo’s opinions.

Additionally, Dr. Kuo testified that adoption and an “abrupt termination” of the children’s relationship with mother would be “significantly harmful to them.” A gradual

lessening of contact with mother would not reduce the emotional consequences of adoption, in Dr. Kuo's opinion, because the children could "see it coming down the road." Also, the children expressed to Dr. Kuo that they are comfortable living with the foster family and they would like to continue visitation with mother.

Lisa Slater

Slater testified on mother's behalf as an expert in the areas of placement of minor children, permanency planning, and attachment.

After reviewing the Department's section 366.26 report, Slater concluded that Espinoza's "analysis of the bond between the mother and child was minimized and, therefore, the impact [of] breaking that bond was not taken into account fully." Although Slater acknowledged that adoption is considered the most stable permanent plan for children who are not in the care of their parents, it is her opinion that adoption is not appropriate in this case. According to Slater, severing the bond between mother and the children would be too traumatic and the children do not "have the tools to process that adequately."

Slater further explained that AL. and L. are "very bonded to their mother." Although Slater found that the children are positively attached to the foster parents, are "in a stable, loving, nurturing [foster] home right now" and "are emotionally supported in this home," Slater believes that mother provides something that the adoptive parents cannot provide, which is unconditional love. Her recommendation for the children's permanent plan is guardianship. Her opinion is that the children will experience not seeing their mother as a traumatic event, whether the termination of their relationship is sudden or gradual.

Mother

AL. and L. were removed from mother when AL. was six years old and L. was four years old. Except for one year when she had a job, mother was a stay-at-home mother and raised the girls with the assistance of father. The family had holiday

traditions, such as Thanksgiving dinner and opening presents on Christmas morning, and celebrated the girls' birthdays.

Mother was in custody for eight months after this case began. She maintained contact with the girls by writing letters to them that she sent to Espinoza, the social worker, and the girls wrote letters that they gave to Espinoza to give to mother.

Since her release from custody mother has visited the girls twice a week for two hours. Mother helps AL. by encouraging her to express her feelings and hugging and kissing her, and by telling AL. how much she loves her. AL. tells mother about problems at school and mother gives her advice on how to handle them. Mother manages the girls' behavioral issues during her visits, such as L.'s "meltdowns," by using tools she learned in her parenting class.

Mother believes that if AL. could not see her anymore, AL. would be hurt and feel it was her fault. AL. would also continue to hold her feelings in. L. would react by disobeying and yelling.

Mother admitted there was domestic violence in her relationship with father. However, she intends to resume her relationship with father when he is released from prison. Mother understands that she is responsible for the girls' situation, but she believes that AL. and L. "deserve to have [mother] in their life so [she] can support them and be there for them." Mother wants to remain in contact with the girls and would like to have them returned to her care at some point.

Elizabeth Espinoza

Espinoza testified on behalf of the Department as an expert in the placement of dependent children and permanency planning assessment. She was first assigned this case in May 2011 and has served as the primary social worker since that time.

AL. and L. have lived with the current foster parents since they were removed from their parents' custody in September 2010. When the girls were first placed in protective custody, they exhibited behaviors such as physical fighting with each other and

tantrums, as well as symptoms of depression. In the past two years, these behaviors have decreased in frequency and severity. In Espinoza's opinion, this improvement is due to the girls being in a safe environment and receiving supportive services, including individual therapy.

Espinoza has observed AL. and L. with the foster parents at least once a month for the past 18 months. She has observed mother's visits with AL. and L. during 30 hours of either direct supervision or observation. AL. and L. refer to the foster parents as " 'mama,' 'papa,' 'mom' or 'dad' " when talking to them privately. In other contexts, AL. and L. have referred to them as " 'foster dad' and 'foster mom,' " and " 'Fake mom, fake dad.' " The prospective adoptive home with the foster parents includes five other children. Espinoza has observed AL. and L. interacting with their foster siblings, whom they call their "sisters and brothers."

Espinoza believes that the termination of the girls' relationship with their mother "would be very difficult, and it's going to be a difficult process because there's going to be a loss for them, and every time there's that major of a loss there's an impact." Espinoza did not agree with Slater's opinion that Espinoza has minimized the bond between the girls and their mother. Espinoza determined that the AL. and L. have a positive relationship with their mother and enjoy being with her. They also view mother as a parental figure during visits. However, Espinoza believes that AL. and L. will not suffer detriment if the relationship is terminated because they have shown that they are resilient and their therapist has reported that the girls "have the ability to process grief and loss."

In Espinoza's opinion, the foster parents are currently providing and will continue to provide "a safe relationship, safe home environment, consistency, stability, nurture, [and] support." AL. recognizes both her biological mother and her foster mother as mother figures. However, AL. seeks emotional support from the foster mother and when asked "who she considers safe people for her to talk to," AL. listed the foster mother and

the therapist but not her mother. Mother has informed Espinoza that AL. and L. did not suffer sexual abuse.

Espinoza's assessment is that adoption is the preferred plan because AL. and L. need stability, consistency, and "emotional safety," which they are already receiving from the foster parents. Mother cannot meet these needs because she has not been able to accept her own victimization even after two years of therapy and services.

Espinoza does not agree that a permanent plan of legal guardianship is preferable for AL. and L. Her opinion is that "[l]egal guardianship doesn't give them the stability and consistency that the plan of adoption would, and it is [her] assessment that adoption outweighs the parental relationship in [this] situation." The plan of adoption would include working closely with the girls' individual therapist and would not include an abrupt termination of their visits with mother since the girls have difficulty transitioning. Espinoza anticipates that the termination of mother's visits would occur over a period of six months.

Espinoza acknowledged that the foster parents are willing to become the guardians of AL. and L. if the court does not choose adoption as the permanent plan. However, she believes that adoption is better for them because "legal guardianship leaves a lot of doors open for situations to arise that are not permanent. For the girls things could change." Also, the foster parents have safety concerns about mother visiting the girls during a guardianship, especially since the foster mother was subpoenaed to testify against father. AL. and L. have indicated that they want to continue living with the foster parents and to continue seeing mother.

C. The Juvenile Court's Decision

The juvenile court announced its decision from the bench on January 10, 2013. Before ruling, the court stated the issue as follows: "The matter before this Court is whether or not there is a parent-child relationship such that termination [of parental

rights] would be detrimental to the child and constitute a compelling reason not to terminate.”

The juvenile court then stated its finding that Espinoza, the Department’s social worker, was the most credible witness. “In resolving this issue the Court finds the testimony of Ms. Espinoza to be the most helpful and convincing. The Court was struck by the sense of compassion she displayed for the family, the clarity and sincerity, and the depth of her testimony and assigns that testimony significant credence. [¶] Ms. Espinoza has worked with this family for nearly two years. She has observed the children interact with their mother for over 30 hours during this time frame. She has observed the girls interact with their foster parents and foster siblings in both private and social settings. She’s worked closely with the minors’ therapist and stayed in constant communication in order to assist and follow-up with their emotional needs. She has worked with their teachers and their caregivers and other service providers in order to assess their needs. The Court believes that she, in fact, is the best person in the best position to assess the childrens’ needs.”

The juvenile court further found that although “[o]ther experts testified that the children loved their mother and that they looked forward to their visits, and their visits were very appropriate and enjoyable, and the mother is loving,” that did not overcome the benefits of adoption. The court explained that “of greatest significance to this Court was again the opinion of Ms. Espinoza that the children are, in fact, resilient, and the children have established a loving, parental relationship with their present foster parents. They have established a sibling relationship with the foster siblings. [¶] There’s no question that the girls will suffer a loss. However, the loss does not outweigh the benefit that a permanent, safe, stable, consistent and secure home that adoption confirms.”

The court then ruled as follows: “The Court has considered the wishes of the child and the child’s Counsel. The Court finds by clear and convincing evidence that it is likely the child [will] be adopted. The Court terminates the parental rights of the

mother . . . and the father. [¶] Further, this Court frees the child for adoption. . . . The Court will order all of the additional recommended orders and find that the placement is appropriate and necessary.”

On March 13, 2013, the juvenile court filed its written orders. The court adopted the Department’s recommendations as stated in the section 366.26 report, including the termination of parental rights, the continued placement of the children in the foster home, and the selection of adoption as the permanent plan.

Mother, father, and the children (though the minors’ counsel) filed timely notices of appeal.

III. DISCUSSION

Since all appellants contend that the juvenile court erred in failing to select guardianship as the permanent plan pursuant to the parent/child relationship exception to the statutory preference for adoption (§ 366.26, subd. (c)(1)(B)(i)), we will begin with an overview of the legal framework for permanency planning in juvenile dependency cases and the applicable standard of review.

A. Legal Framework for Permanency Planning

1. The Preference for Adoption

The California Supreme Court has stated that “[t]he 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.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

“When the child is removed from the home, the court first attempts, for a specified period of time, to reunify the family. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52 (*Celine R.*)) Where reunification efforts have failed, “ ‘the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. [Citation.]’ ” (*Ibid.*)

“ ‘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.]” (*Celine R.*, *supra*, 31 Cal.4th at pp. 52-53.) “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).)” (*Celine R.*, *supra*, at p. 53.)

“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. [Citation.] The Legislature has thus determined that, where possible, adoption is the first choice. ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ [Citation.] ‘Guardianship, while a more stable placement than foster care, is not irrevocable and thus falls short of the secure and permanent future the Legislature had in mind for the dependent child.’ [Citation.]” (*Celine R.*, *supra*, 31 Cal.4th at p. 53; see also *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419.)

2. The Parent/Child Relationship Exception

“When the juvenile court finds that the child is adoptable, it must terminate parental rights unless it finds one of four specified circumstances in which termination would be detrimental (§ 366.26, subd. (c)(1)(A)-(D)).” (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 852.) Our Supreme Court has instructed that “[t]he 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.]” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.)

At issue in the present case is the parent/child relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i). This court stated in *In re C.B.* (2010) 190 Cal.App.4th 102, 123-124 (*C.B.*) that “[u]nder section 366.26, subdivision (c)(1)(B)(i), parental rights cannot be terminated where the juvenile court ‘finds a compelling reason for determining that termination would be detrimental to the child’ because ‘[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ”

A parent who claims that the parent/child relationship exception applies, and therefore parental rights should not be terminated, has the burden of proof. (*C.B.*, *supra*, 190 Cal.App.4th at p. 122.) To meet this burden, “ ‘the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child. [Citation.]’ ” (*Id.* at p. 126.) As this court has explained, “ ‘[i]nteraction 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.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship. [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316 (*Bailey J.*).

In addition, “ ‘[t]he exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.’ [Citation.]” (*C.B., supra*, 190 Cal.App.4th at p. 124.)

Moreover, “[t]he exception’s second prong requiring that ‘the child would benefit from continuing the [parent-child] relationship’ means that ‘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.’ [Citation.] The juvenile 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.’ [Citation.] ‘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.’ [Citation.]” (*C.B., supra*, 190 Cal.App.4th at p. 124.)

B. Standard of Review

This court has determined that there is a two-part standard of review for the juvenile court’s ruling regarding the application of the parent/child relationship exception provided by section 366.26, subdivision (c)(1)(B)(i). (*Bailey J., supra*, 189 Cal.App.4th at pp. 1314-1315.) First, “[s]ince the proponent of the exception bears the burden of producing evidence of the existence of a beneficial parental . . . 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 . . . relationship, a substantial

evidence challenge to this component of the juvenile court's determination cannot succeed." (*Id.* at p. 1314.)

"The same is not true as to the other component of these adoption exceptions. The other component of . . . the parental relationship exception . . . 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." (*Bailey J., supra*, 189 Cal.App.4th at p. 1315; accord, *C.B., supra*, 190 Cal.App.4th at p. 123.)

C. The Parties' Contentions

Mother, father, and the children have similar arguments on appeal. They generally contend that the evidence showed that there was a beneficial parent/child relationship between mother and the children, and the juvenile court abused its discretion in finding that the detriment to the children that would be caused by severing the relationship was outweighed by the benefits of adoption. They also contend that the juvenile court should have selected legal guardianship and a regular visitation schedule for mother as the permanent plan.

According to mother, the juvenile court implicitly determined that there was not a beneficial parent/child relationship despite the "undisputed evidence in the record from experts in child attachment and bonding and from the children themselves that there was a beneficial parent relationship." Mother argues that "there was a plethora of evidence from qualified and learned experts that separation from mother would cause the children

significant and lasting emotional harm, which harm could be avoided if visitation continued.” Mother further argues that “[a]s Dr. Kuo and Lisa Slater proposed, a permanent plan of guardianship with the foster parents would ensure that the detriment to the children which would be caused by severing their relationship with mother would be avoided. That plan would allow the children to continue to reside with their foster family in a placement [in] which they loved and felt secure. They would also continue their contact with mother and, perhaps when appropriate, undertake conjoint counseling with her.”

AL. and L, through minors’ counsel, similarly argue that the juvenile court abused its discretion in terminating parental rights since, under the circumstances of this case, the court should have selected legal guardianship with the current foster parents as the permanent plan. They add that the court erred in relying on the testimony of Espinoza, the Department’s social worker, to find that the parent/child relationship exception to adoption did not apply because Espinoza’s assessment did “not adequately address the impact of severing the girls’ relationship with Mother or the permanence, safety, stability, consistency and security that would be provided through a legal guardianship.” They urge that the benefits of legal guardianship outweigh the benefits of adoption because a guardianship would allow them to remain in a stable environment during the remainder of their childhoods while maintaining their relationship with their mother.³

Father adopts mother’s opening brief and similarly contends that adoption is not in the best interests of AL. and L. due to the detriment they will suffer from the loss of the mother, and therefore the juvenile court abused its discretion in choosing adoption instead of guardianship as the permanent plan.

³ We note that under section 366.26, subdivision (h)(1), “the court shall consider the wishes of the child and shall act in the best interests of the child.” However, this court has stated that “a child’s wishes are not necessarily determinative of the child’s best interest [citation].” (*C.B.*, *supra*, 190 Cal.App.4th at p. 125.)

The Department responds that the evidence does not support a finding that a beneficial relationship exists between mother and the children that is sufficient to satisfy the parent/child exception to adoption. According to the Department, the evidence showed that mother “had pleasant visits with the children but she did not occupy a *truly* parental role in the children’s lives. Further, the girls do not have needs that only their biological mother can meet. All of the children’s particular needs, especially emotionally, were met by their foster parents.” The Department emphasizes that although it is undisputed that AL and L love mother, mother has continued to deny the “significant amount of the trauma her children endured while in her care” and therefore mother cannot provide the necessary validation of their traumatic experiences. The foster parents have, in the Department’s view, met the girls’ emotional needs and provided “stability, security, safety and love.”

The Department further argues that the juvenile court did not abuse its discretion in selecting adoption since, even assuming the court had expressly found that a beneficial relationship exists between mother and the children, the court could reasonably rely upon the testimony of social worker Espinoza that terminating the relationship would not cause great harm to the children and guardianship would be a less stable and secure plan than adoption.

D. Analysis

1. Parent/Child Relationship

The juvenile court did not make an express finding regarding the existence of a beneficial parental relationship within the meaning of the parent/child exception to adoption provided by section 366.26, subdivision (c)(1)(B)(i). In ruling from the bench, the court stated: “Other experts testified that the children loved their mother and that they looked forward to their visits, and their visits were very appropriate and enjoyable, and the mother is loving. The testimony of Doctor Kuo was that she believed that the mother did an excellent job in making those visits as natural as possible in an unnatural

and supervised limited setting. Ms. Espinoza also testified that she, in fact, agreed with the testimony [of] the other experts, recognized and acknowledged that fact.”

On this record, we believe that the juvenile court implicitly found that mother has an emotional bond with the children and their contacts were frequent and loving, but mother failed to establish a beneficial parental relationship within the meaning of the parent/child exception to adoption provided by section 366.26, subdivision (c)(1)(B)(i). (See *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) On the other hand, the court expressly found that the children had established a parental relationship with their foster parents, based on Espinoza’s testimony. We determine that the juvenile court’s findings are supported by substantial evidence.

The juvenile court found Espinoza’s testimony “to be the most helpful and convincing” due to Espinoza’s compassion for the family and her two years of working closely with the family and the children’s caregivers and service providers. Espinoza testified that AL and L have a positive relationship with their mother, enjoy being with her, and viewed her as a parental figure during their supervised visits. However, Espinoza also testified that mother cannot meet the children’s need for emotional safety and security because mother has been unable to accept her own victimization by father even after two years of therapy and services.

Appellants argue that the juvenile court erred in relying upon Espinoza’s testimony instead of the testimony of mother’s experts, Dr. Kuo and social worker Slater. “This argument is essentially a request that this court reweigh the evidence, which we cannot do. In applying the substantial evidence test, ‘[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts.’ [Citation.] ‘Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.]’ [Citation.]”

(*C.B.*, *supra*, 190 Cal.App.4th at p. 127; see also *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.)

Further, “[t]he testimony of a single witness is sufficient to uphold a judgment [citation], and an appellate court may not evaluate that testimony as a basis for reversal. [Citation.]” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.) The juvenile court was therefore “entitled to find the social worker credible and to give greater weight to her assessments and testimony.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

For these reasons, we find no merit in appellants’ contention that the trial court erred in failing to find the existence of a beneficial parental relationship that is sufficient to satisfy the parent/child exception to adoption provided by section 366.26, subdivision (c)(1)(B)(i).

2. Adoption

As we have discussed, where, as here, it is likely that the dependent children will be adopted, the court must terminate parental rights and order the children placed for adoption unless one of the statutory exceptions, such as the parent/child exception, applies. (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) The parent/child exception does not apply unless “the juvenile court find[s] that the existence of that [parental] relationship constitutes a ‘*compelling reason*’ for determining that termination would be detrimental.” (§ 366.26, subd. (c)(1)(B), italics added.) . . . 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; accord, *C.B.*, *supra*, 190 Cal.App.4th at p. 123.)

We determine that even assuming that mother had established the existence of a beneficial parental relationship within the meaning of the parent/child exception, she cannot show that the juvenile court abused its discretion in finding that the relationship did not constitute a “compelling reason” for finding that the termination of parental rights

and the selection of adoption as the permanent plan would be detrimental to the children. (See *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1316-1317.)

Under the abuse of discretion standard, “ ‘ ‘ ‘a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. . . .’ ’ . . . ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.’ ’ ” (In *re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) In juvenile dependency cases, “[t]he juvenile court’s opportunity to observe the witnesses and generally get ‘the feel of the case’ warrants a high degree of appellate court deference. [Citation.]” (*Ibid.*)

Here, the juvenile court determined that although AL. and L. would suffer a loss when their mother’s parental rights were terminated, “the loss does not outweigh the benefit that a permanent, safe, stable, consistent and secure home that adoption confirms.” The court expressly relied upon Espinoza’s testimony, as the witness most familiar with the children and their circumstances, that AL. and L. were “resilient” and had “established a loving, parental relationship with their present foster parents” and “a sibling relationship with the foster siblings.” Espinoza further testified that AL. and L. would not suffer detriment if their relationship with their mother was terminated because they have shown that they are resilient and their therapist has reported that they “have the ability to process grief and loss.” It was also Espinoza’s opinion that adoption was the preferred plan because AL. and L. need stability, consistency, and “emotional safety,” which mother could not provide and they were already receiving from the foster parents. Based on this testimony, the juvenile court could reasonably decide that the parent/child relationship in this case was outweighed by the benefit that AL. and L. “would gain from the stability and permanency of adoption [citation].” (*C.B.*, *supra*, 190 Cal.App.4th at p. 128.)

We are not persuaded otherwise by mother’s reliance on the decision in *In re Scott B.* (2010) 188 Cal.App.4th 452 (*Scott B.*) or by father’s reliance on the decision in

In re S.B. (2008) 164 Cal.App.4th 289 (*S.B.*). Most importantly, the juvenile court's decision with respect to the parent/child exception is made on a case-by-case basis (*C.B.*, *supra*, 190 Cal.App.4th at p. 124) and therefore a fact-based decision in one juvenile dependency case has limited relevance to a fact-based decision in another case. In addition, both *Scott B.* and *S.B.* are distinguishable.

In *Scott B.*, the dependent child was an 11-year-old boy with special needs who had a very close relationship with his mother. (*Scott B.*, *supra*, 188 Cal.App.4th at p. 471.) The Los Angeles County Department of Children and Family Services recommended at the section 366.26 hearing that parental rights be terminated and adoption by the foster mother proceed because the foster mother had given assurances that Scott could continue to have contact with his mother after adoption. The juvenile court was also advised that Scott had stated he would run away if he was adopted. (*Id.* at pp. 465-466.) The appellate court reversed the juvenile court's order terminating parental rights and selecting adoption as the permanent plan on the ground that "Scott's continued emotional instability and his repeated insistence that his preference would be to live with Mother, presents a compelling reason for finding that termination of parental rights is detrimental to the minor." (*Id.* at p. 471.) The appellate court also found that "Mother provides stability in Scott's life. That is what adoption is supposed to do, but it may not in this case. . . . The only way to avoid . . . serious emotional and developmental setback and ensure that Scott's usual visitation with Mother continues is by court order. The only way to have such an order is to have Scott's permanent plan be legal guardianship or long-term foster care." (*Id.* at p. 472.) In contrast, in the present case there was evidence that it was the foster parents, not mother, who were providing stability in the lives of AL and L.

In *S.B.*, the appellate court ruled that the juvenile court had erred in finding that the beneficial parental relationship exception did not apply and terminating parental rights. (*S.B.*, *supra*, 164 Cal.App.4th at p. 301.) The appellate court determined that

“[t]he record shows S.B. loved her father, wanted their relationship to continue and derived some measure of benefit from his visits. Based on this record, the only reasonable inference is that S.B. would be greatly harmed by the loss of her significant, positive relationship with [her father].” (*Id.* at pp. 300-301) However, in a subsequent decision, *In re C.F.* (2011) 193 Cal.App.4th 549, the appellate court limited the application of *S.B.*, as follows: “[W]e once again emphasize that *S.B.* is confined to its extraordinary facts. It does not support the proposition a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parent contact.” (*Id.* at pp. 558-559.)

Having determined that the juvenile court did not abuse its discretion in finding that the parent/child exception to adoption does not apply in this case, we will affirm the orders terminating parent rights and selecting adoption as the permanent plan.

IV. DISPOSITION

The March 13, 2013 orders terminating parental rights and selecting adoption as the permanent plan are affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

RUSHING, P.J.

ELIA, J.