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

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

H040150  
(Santa Clara County  
Super. Ct. Nos. JD15995 & JD16770)

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

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

Appellant A.B. is the mother of S.T. and S.J., the girls who are the subject of this dependency proceeding. Appellant appeals from an order terminating her parental rights, arguing that the juvenile court erred in failing to apply the beneficial parental relationship exception to termination of parental rights (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).<sup>1</sup> As set forth below, we will affirm the order terminating appellant's parental rights.

**FACTUAL AND PROCEDURAL BACKGROUND**

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<sup>1</sup> Subsequent unspecified statutory references are to the Welfare and Institutions Code.

### ***The Dependency Petitions***

On July 22, 2011, the Santa Clara County Department of Family and Children's Services (hereafter "the Department") filed dependency petitions (§ 300, subd. (b)) on behalf of seven-year-old S.T. and five-year-old S.J. The petitions alleged that appellant had failed to protect S.T. and S.J. Specifically, the petitions alleged that appellant had an "extensive substance abuse problem which place[d] her children at risk of physical harm," had used drugs "for over 20 years," and had "engaged in approximately 3 substance abuse programs but continue[d] to use drugs." The petitions further alleged that on July 20, 2011, appellant "was arrested for being under the influence of a controlled substance, possession of a controlled substance, and child endangerment. [Appellant] tested positive for amphetamine, methamphetamine, methadone, phencyclidine (PCP), propoxyphene, tricyclic antidepressants, and marijuana." The petitions noted that, due to appellant's substance abuse problem, S.T. and S.J. had previously been declared dependents of the court and removed from appellant's care.

### ***Detention and the Jurisdiction and Disposition Hearings***

On July 25, 2011, the juvenile court detained S.T. and S.J. and temporarily removed them from appellant's physical custody. At a jurisdiction hearing on December 1, 2011, the court sustained the dependency petitions. At the disposition hearing on February 9, 2012, the court declared S.T. and S.J. dependents of the court, denied appellant reunification services, and ordered that appellant have a supervised visit with S.T. and S.J. once a week. The court set the case for a section 366.26 termination hearing.

### ***The Section 366.26 Report***

The Department's section 366.26 report recommended that the court terminate appellant's parental rights and free S.T. and S.J. for adoption. Addendums to the report recommended that S.T. and S.J. be adopted by their current caregivers, Mr. and Mrs. A.

The addendums noted that Mr. and Mrs. A. wished to adopt S.T. and S.J. An addendum dated January 23, 2013 described Mr. and Mrs. A.'s history of caring for the girls:

“Since 2005 to the present, [S.T.] has been removed from [appellant’s] care 5 times and [S.J.] has been removed 4 times and each time the girls were removed, they [were] placed with [Mr. and Mrs. A.]” That addendum further noted that “each time [S.T. and S.J.] were returned to [appellant’s] care, [appellant] failed to ensure their safety” due to her substance abuse.

***The Section 366.26 Hearing***

The contested section 366.26 hearing commenced on April 29, 2013. The court admitted the Department’s section 366.26 report and the addendums to that report into evidence, and the court took judicial notice of the prior orders and findings of the past dependency proceedings involving S.T. and S.J. Social worker Ly Sok and therapist Misty Batch testified for the Department, and Dr. Ashley Cohen testified for appellant.

Sok testified that she had been the social worker for S.T. and S.J.’s case since October 2011. She testified as an expert in the areas of permanency and the selection of permanent plans.

Sok described Mr. and Mrs. A.’s history of caring for S.T. and S.J. Mr. and Mrs. A. first cared for S.T. when she was removed from appellant’s care at age one. S.T. was again removed from appellant when she was three years old, and Mr. and Mrs. A. took care of S.T. at that time. When she was five years old, Mr. and Mrs. A. resumed caring for S.T. due to another removal. S.J. was first cared for by Mr. and Mrs. A. when she was removed from appellant’s care at 18 months old. Mr. and Mrs. A. again cared for S.J. when she was removed from appellant at the age of three. From December 2008 to the time of the section 366.26 hearing, S.T. and S.J. spent only three months in appellant’s care and were cared for by Mr. and Mrs. A. the remainder of the time. From

July 2011 to the time of the section 366.26 hearing, S.T. and S.J. were constantly in Mr. and Mrs. A.'s care.

Sok testified that the relationship between Mr. and Mrs. A. and the girls was "like that of parents and children." She explained that S.J. and S.T. viewed Mr. and Mrs. A. as the primary place to get emotional and physical nurturing. The girls looked to Mr. and Mrs. A., not to appellant, for their primary parenting needs. Sok observed appellant's visits with the girls, and she described appellant's relationship with the girls as "like a friendly visitor."

Appellant was incarcerated from October 2012 to December 2012, and she did not visit the girls during that time. Sok testified that the girls appeared to be more relaxed during the time period when they did not see appellant, and that the girls were happy during the time period when they did not see appellant. The girls never stated that they wanted to see appellant.

Sok testified that S.T. sometimes acted as appellant's caretaker. S.T. took care of appellant when appellant was "using or passed out on the couch."

Sok recommended that appellant's parental rights be terminated and S.T. and S.J. be adopted by Mr. and Mrs. A. She explained that the girls were "very much adoptable," the girls were "strongly bonded" with Mr. and Mrs. A., and Mr. and Mrs. A. were "willing and committed to adopting the girls." She noted that when the girls were briefly returned to appellant's care in 2011, they were "in distress" and "wanted to be placed back with Mr. and Mrs. [A]." Sok opined that if the girls were never able to talk to or see appellant again, the girls would "be able to overcome that loss." She explained that the girls were "very resilient children."

Sok opined that it would be detrimental to S.T. and S.J. if adoption were not ordered. She explained that the girls would "greatly benefit" from the "safe and nurturing environment" provided by Mr. and Mrs. A. She also explained that the girls

were “traumatize[d] . . . emotionally” when they were “bounced back and forth” between appellant and Mr. and Mrs. A., and that it was “of the utmost importance . . . for the girls to know where their permanent home is.”

Batch testified that she was a licensed family therapist. S.T. and S.J. began having therapy sessions with Batch in October 2010. From October 2010 to the time of the section 366.26 hearing, Batch had a therapy session with the girls approximately once a week.

Batch testified that S.T. and S.J. had been the victims of emotional trauma. She explained that the girls experienced emotional trauma when appellant neglected them and abused drugs. The girls experienced “feelings of hurt and anger and sadness” due to the repeated removals from appellant’s care.

Batch testified that S.T. and S.J. loved and trusted appellant in May 2011. Their relationship with appellant changed, however, when they were removed from appellant’s care in July 2011. S.T. was angry with herself for failing to prevent appellant’s substance abuse, she worried about appellant, and she felt “pity” for appellant. S.T. felt “anxious” around appellant, and she felt that her relationship with appellant was “complicating her life.” Because of appellant’s substance abuse problem, S.T. did not feel safe with appellant. S.J. was angry with appellant, and she did not want to spend time with appellant. Batch testified that appellant did not “occupy a parental role emotionally” for the girls.

During the few months in 2012 when appellant was incarcerated and did not visit with the girls, Batch noticed a change in the girls. The girls became more childlike and carefree, and they did not talk about traumas or worries. When they were not visiting appellant, the girls “got to a point of emotional health” at which Batch believed they no longer needed therapy. When the girls resumed visiting appellant, however, they began expressing feelings of pain and frustration. S.T. recently told Batch that if the visits with

appellant were to continue, she would need Batch to remain in her life as her therapist. Batch explained that the visits with appellant were traumatic for S.T.

Batch testified that the girls' emotional and physical needs were met in the home of Mr. and Mrs. A. The girls felt safe and secure with Mr. and Mrs. A., and they wanted to spend the rest of their lives with Mr. and Mrs. A. Batch testified that it would be traumatic for the girls to not be with Mr. and Mrs. A.

Batch explained the concept of adoption to the girls, and she advised the girls that they might never see or have contact with appellant if they were adopted. S.T. and S.J. both stated that they wanted to be adopted by Mr. and Mrs. A. S.T. stated that she would "be fine" if she did not see appellant. S.T. also stated that she worried about appellant, and that she would like to phone appellant once every three to six months to make sure that appellant was "okay." S.J. stated that she would "be glad" if she had no contact with appellant.

Batch testified that S.T. and S.J. were "extremely resilient." The girls never expressed that it would be traumatic for them to not have appellant in their lives.

Dr. Cohen testified that she was a clinical and forensic neuro-psychologist. She testified as an expert in the area of clinical and forensic child neuro-psychology and in the area of diagnosis and assessment of attachment and parenting.

Dr. Cohen testified that appellant retained her to conduct a bonding study. Such a study required Dr. Cohen to determine "[w]hether or not an emotional bond exists between the mother and the children such that it's likely to be enduring and important to the children in the future, and . . . whether or not some contact should be continued or be prohibited." In conducting the study, Dr. Cohen reviewed the Department's section 366.26 report and addendums, spoke to appellant and Batch, observed S.T. and S.J. during a February 2013 visit with appellant, and observed the girls during a March 2013

visit with appellant. Dr. Cohen never spoke to S.T. and S.J., and she did not interview Sok or Mr. and Mrs. A.

Based on her study, Dr. Cohen determined that a “healthy parent/child bond” existed between appellant and the girls. Dr. Cohen also determined that severing the bond between appellant and the girls would have a strong detrimental effect on the girls. Dr. Cohen explained that, when she observed the girls’ visits with appellant, “it looked like a close interaction between kids who had a long acquaintance with a relative.” Dr. Cohen also noted that Batch had stated it would be “too horrible” if the girls never saw appellant again. When Batch testified, however, she denied making such a statement.

The section 366.26 hearing concluded on August 30, 2013. On that date, the court terminated appellant’s parental rights, selected adoption as the permanent plan for S.T. and S.J., and designated Mr. and Mrs. A. as the prospective adoptive parents. In issuing its ruling, the court stated that it was “convinced” the girls were adoptable. The court also rejected appellant’s assertion that the beneficial parental relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) was applicable.

### **DISCUSSION**

Appellant contends that we must reverse the order terminating her parental rights because her relationship with S.T. and S.J. satisfied the beneficial parental relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). As explained below, we conclude that the juvenile court did not err in refusing to apply that exception, and we accordingly will affirm the order terminating appellant’s parental rights.

#### ***The Statutory Framework and the Standard of Review***

“ ‘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

care-taker to make a full emotional commitment to the child.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53 (*Celine R.*).

At a section 366.26 hearing, adoption is the preferred choice. (*Celine R.*, *supra*, 31 Cal.4th at p. 49; § 366.26, subds. (b) & (c).) Section 366.26 states, in pertinent part: “If the court determines, based on the assessment provided as ordered under [applicable statutory provisions], 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.” (§ 366.26, subd. (c)(1), italics added.)

There are statutory exceptions to the general rule requiring adoption and the concomitant termination of parental rights. These exceptions, however, “ ‘must be considered in view of the legislative preference for adoption.’ ” (*Celine R.*, *supra*, 31 Cal.4th at p. 53.) “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.” (*Ibid.*, italics in original.)

The beneficial parental relationship exception is codified in section 366.26, subdivision (c)(1)(B)(i). That section provides that a court need not terminate parental rights and order adoption where the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship” and the relationship constitutes a “compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B)(i).) The parent bears the burden of proving the two components of the exception. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*); *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*).

The first component of the exception—whether a beneficial parental relationship exists—is a factual issue which we review for substantial evidence. (*Bailey J.*, *supra*,

189 Cal.App.4th at p. 1314.) A challenge to a juvenile court’s failure to find a beneficial parental 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, “[u]nless 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 component of the exception— whether the relationship constitutes a compelling reason for determining that termination of parental rights would be detrimental to the child—is “a ‘quintessentially’ discretionary decision.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.) It “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.” (*Ibid.*, italics in original.) “Because this component of the juvenile court’s decision is discretionary, the abuse of discretion standard of review applies.” (*Ibid.*)

***The Juvenile Court Did Not Err in Refusing to Apply the Beneficial Parental Relationship Exception***

Appellant contends that she proved the first component of the exception—the existence of a beneficial parental relationship—because the evidence showed that her regular visitation established a “long lasting emotional bond” between her and the girls. Respondent Department concedes that appellant consistently visited the girls, and it instead argues that that there was no beneficial parental relationship because appellant did not occupy a parental role in the girls’ lives.

“This appellate court and others have stated that ‘[t]o meet the burden of proving the section 366.26, subdivision (c)(1)(B)(i) exception 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.’” (*In re*

*C.B.* (2010) 190 Cal.App.4th 102, 126 (*C.B.*.) Factors to be considered in making this determination include the “age of the child,” the “portion of the child’s life spent in the parent’s custody” and the “ ‘positive’ or ‘negative’ effect of interaction between parent and child.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; see also *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.) “ ‘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.’ ” (*Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

Here, the undisputed facts did not establish the existence of a beneficial parental relationship. At the time of the section 366.26 hearing in 2013, S.T. was nine years old, and S.J. was seven years old. Due to appellant’s substance abuse problem, each of the girls was first removed from appellant’s custody when she was a baby, the girls were repeatedly removed from appellant’s custody, and the girls spent much of their lives in the care of Mr. and Mrs. A. Indeed, from December 2008 to the time of the section 366.26 hearing in 2013, the girls had spent only three months in appellant’s custody. Although appellant visited the girls when they were not in her custody, the evidence regarding appellant’s visitation in no way showed that she occupied a parental role in the girls’ lives. Batch testified that appellant did not “occupy a parental role” for the girls. She explained that S.T. felt anxious and unsafe in appellant’s care, S.T. worried about appellant and pitied appellant, and S.J. felt anger toward appellant and did not want to spend time with appellant. Sok testified that the girls did not look to appellant for their parenting needs, but instead looked to Mr. and Mrs. A. for their parenting needs. Moreover, the evidence failed to establish that appellant’s visits with the girls were positive interactions. Batch testified that during the few months when appellant was incarcerated and did not visit the girls, the girls were carefree, childlike, and “got to a

point of emotional health” where they no longer needed therapy. However, when appellant resumed visits with the girls, the girls expressed feeling of pain and frustration to Batch, and Batch described the visits as “traumatic” for S.T. Sok agreed that the girls were happy and more relaxed during the time period when they did not visit appellant. Accordingly, because the undisputed facts did not establish the existence of a beneficial parental relationship, appellant failed to prove the first component of the beneficial parental relationship exception.

In arguing that the evidence established the existence of a beneficial parental relationship, appellant relies on the testimony of Dr. Cohen. She emphasizes that Dr. Cohen’s testimony showed the existence of an “emotional bond” between her and the girls, and she contends that this bond was sufficient to establish a beneficial parental relationship. Appellant’s argument is unavailing because evidence demonstrating a mere emotional bond between parent and child is insufficient to establish a beneficial parental relationship. (*C.B.*, *supra*, 190 Cal.App.4th at p. 126.)

Even if appellant had established the existence of a beneficial parental relationship, she cannot show that the juvenile court abused its discretion in regard to the second component of the beneficial parental relationship exception. The second component of the exception required the juvenile court to determine whether appellant’s relationship with the girls constituted a “compelling reason” for determining that termination of parental rights would be detrimental to the girls. (§ 366.26, subd. (c)(1)(B)(i).) The juvenile court did not abuse its discretion in concluding that the relationship here did not constitute such a compelling reason. Strong evidence showed that the girls would benefit from, and not be harmed by, termination of their relationship with appellant: Sok testified that the girls were “strongly bonded” with Mr. and Mrs. A., and that Mr. and Mrs. A. were “willing and committed” to adopting the girls; Sok explained that the girls would “greatly benefit” from the “safe and nurturing

environment” provided by Mr. and Mrs. A.; Sok testified that when the girls were briefly placed in appellant’s custody in 2011, they were “in distress” and “wanted to be placed back with” Mr. and Mrs. A.; S.J. told Batch that she would “be glad” if she had no contact with appellant; S.T. told Batch that she would “be fine” if she never saw appellant; and both girls stated that they wanted to be adopted by Mr. and Mrs. A. Based on the foregoing evidence, the juvenile court could reasonably conclude that termination of appellant’s parental rights would have no detrimental impact on the girls. Although Dr. Cohen opined that terminating appellant’s parental rights would have a detrimental effect on the girls, the juvenile court was not required to credit her testimony. (See *In re Thomas C.* (1986) 183 Cal.App.3d 786, 797 [a trial court is “free to reject” expert testimony].) Indeed, given the circumstance that Dr. Cohen never spoke to the girls, it was not unreasonable for the juvenile court to discredit her opinion. Thus, the juvenile court did not abuse its discretion in ruling on the second component of the beneficial parental relationship exception.

For the foregoing reasons, we conclude that the juvenile court did not err in refusing to apply the beneficial parental relationship exception. We therefore must affirm the order terminating appellant’s parental rights.

**DISPOSITION**

The order terminating appellant's parental rights is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.