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

In re H.B., a Person Coming Under the
Juvenile Court Law.

H042756
(Santa Cruz County
Super. Ct. No. DP002939)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

V.D.,

Defendant and Appellant.

In July 2014, the Santa Cruz County Human Services Department (Department) filed a petition under Welfare and Institutions Code section 300, subdivision (b),¹ alleging the failure of the Mother, V.D., and Father, D.B., to protect and supervise their daughter, H.B. (now four; the minor). The minor was removed from the home where she was living with Father and was placed in the custody of her paternal grandmother, M.M. The Department alleged that both parents had substantial substance

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

abuse and mental health issues that prevented them from adequately protecting and supervising the minor.

In September 2014, the juvenile court sustained the petition, ordered the minor's continued placement outside the home, and ordered reunification services for both parents. The court thereafter terminated services in May 2015 and set a selection and implementation hearing pursuant to section 366.26 (permanency planning hearing). On September 11, 2015, after a permanency planning hearing contested by Mother, the court (1) found the minor to be adoptable by clear and convincing evidence, (2) concluded the beneficial parental relationship exception was not established by Mother, and (3) ordered the termination of Mother's and Father's parental rights.

On appeal, Mother contends the juvenile court erred by terminating her parental rights. She asserts that she established the beneficial parental relationship exception to adoption, including having shown that the severing of the parent-child relationship would deprive the minor of a substantial emotional attachment, causing the minor great harm. We find no merit to Mother's appellate claims and will affirm the order declaring adoption as the permanent plan for the minor and terminating parental rights.

FACTS AND PROCEDURAL HISTORY²

I. Initial July 2014 Petition and Detention Order

On July 21, 2014, the Department filed a petition alleging that the minor's parents had failed to protect or supervise the minor. (§ 300, subd. (b).) The Department filed the petition after a July 11 referral relating to Father's inability to care for the minor. A safety

² The recitation of facts and procedural history in this case is derived in part from the record filed by Mother in her prior writ proceeding. (*V.D. v. Superior Court*, H042274.) On our own motion, we take judicial notice of the clerk's transcripts filed in the prior proceeding (which is now closed), pursuant to Evidence Code sections 452, subdivision (d)(1) and 459, subdivision (a). (See *Stephenson v. Drever* (1997) 16 Cal.4th 1167, 1170, fn. 1.)

plan was established in which the paternal grandmother, M.M., took temporary custody of the minor, subject to a further meeting with the Department on July 14. Although M.M. and the minor appeared for the July 14 meeting, Father did not, and the Department thereafter sought ex parte relief from the court for the purpose of obtaining an order for the minor's detention.

The Department alleged in the petition³ that Father's combined drug and alcohol abuse rendered him incapable of providing appropriate care to the minor. His "unstable mental health . . . , including . . . depression and bipolar disorder, and threatened self harm" constituted a threat of physical harm to the minor. Two to three weeks prior to the filing of the petition, Father began drinking heavily in the home while caring for the minor. In an incident in May 2014, Father drank until he passed out; the minor (then two) left the apartment, locking herself out. When a social worker visited the home on July 11, the social worker found many empty wine bottles and no food in the refrigerator. Father indicated he was depressed and admitted he had "turned to alcohol to cope with his difficult feelings." M.M. also reported that on July 11, after the Department's home visit, Father left the minor alone for some period of time. Three days later, on July 14, despite the Department's safety planning efforts and its having provided Father with access to inpatient mental health treatment, Father was placed on a section 5150 hold and hospitalized after he attempted suicide through an overdose of medications.

Mother had recently moved to Southern California and did not have custody of the minor. The Department alleged that Mother's "unstable mental health coupled with substance abuse" rendered her incapable of providing proper care and supervision to the

³ The statements made in this paragraph and in the succeeding paragraphs of this section are based upon the allegations made by the Department in its petition. For simplicity and to avoid repetition, we have generally omitted the phrase "the Department alleges in its petition" in describing the allegations in the petition.

minor. More than a year earlier, in May 2013, Mother had been placed on a section 5150 psychiatric hold after threatening suicide and threatening to kill everyone in the house, including the minor. Mother had stated, “ ‘I’m going to cut off [the minor’s] head and keep her pristine.’ ”

Mother and Father had also engaged in acts of domestic violence in the minor’s presence. Most recently, in February 2014, there had been a physical altercation in which Father had been injured. In addition, there had been five prior referrals to the Department. The first referral occurred in May 2013 as a result of Mother’s threats. There were four subsequent referrals between February and April 2014 as a result of two instances of domestic violence between Mother and Father, an unsubstantiated report of physical abuse of the minor by Father, and an instance of Father’s neglect of the minor due to his substance abuse.

On July 22, 2014, the court ordered the minor detained pursuant to section 319, subdivision (a). The court ordered that Mother and Father receive supervised visitation of the minor a minimum of two times per week for Mother and three times per week for Father.

II. August 2014 Jurisdiction/Disposition Report and Hearing

In its August 2014 jurisdiction/disposition report, the Department reported that the minor had been placed with her paternal grandmother, M.M., in Santa Cruz County. The Department requested that (1) the minor be made a dependent under section 300, subdivision (b), (2) the minor remain in out-of-home care, and (3) the parents receive reunification services. The Department also sought an order that each parent undergo two psychological evaluations pursuant to section 361.5, subdivision (b)(2) to determine if they suffered from a mental disability rendering them incapable of utilizing services.

The social worker reported that Father had applied for and obtained a restraining order to keep Mother away from him and the minor after Mother’s hospitalization in May 2013. Mother’s hospitalization followed the incident in which Mother threatened suicide

and made threats against members of her household. Father had also obtained an order from the family court that he have sole custody of the minor.

The Department also requested the petition be amended to allege that the violent conduct of both parents placed the minor at risk and that, as recently as February 2014, both parents engaged in domestic violence in the minor's presence and both parents sustained injuries. Father admitted he had a temper but blamed Mother primarily for the violence between them. Mother believed Father was the primary aggressor, and his substance abuse and mental health issues resulted in his hostility and rage.

The social worker indicated that Mother's mental health status was "a mystery [that] require[d] further assessment." It appeared there was no documented diagnosis, but Mother had "presented with some extremely concerning behaviors, including her threat to kill her child, and others, that resulted in her hospitalization." Mother denied she had mental health issues or that she had a substance abuse problem.

The social worker also noted that Mother had "experienced chronic homelessness since the birth of her daughter." The social worker reported that during an in-person interview on July 22, 2014, Mother "presented with characteristics that would indicate that she was possibly under the influence or significantly impacted by anxiety or other mental health issues." The social worker also described two later telephone conversations with Mother in which once "again her presentation indicated that she was possibly intoxicated or impaired by mental health issues." The social worker also reported that Mother had tested positive for marijuana use on three occasions in July 2014. Mother told the social worker she smoked marijuana semiregularly for chronic back pain.

At a hearing on August 19, 2014, the court accepted Father's waiver of rights and agreement to submit the matter as to jurisdiction and disposition. The court ordered "two psychological evaluations of [Father], if necessary," and ordered that Mother submit to

two psychological evaluations. It also declared Father to be the presumed parent of the minor.

After a contested jurisdiction/disposition hearing held on September 22, 2014, the court sustained the allegations of the petition, found it had jurisdiction over the minor pursuant to section 300, subdivision (b), and adopted the recommendations of the Department. The court ordered family reunification services for both parents, and supervised visitation of the minor for both parents two times per week (with Father's visitation increased to three times per week after he completed treatment).

III. Department's April 2015 Interim Status Report and Review Hearing

In an April 2, 2015 status report, the Department reported that the minor continued to reside with her paternal grandmother, her only placement since removal from the home in July 2014.

Mother continued to reside in transitional housing. She had access to a Section 8 housing voucher but had been unable to find suitable housing in the Santa Cruz area. The Department reported that Mother had consistently participated in most services under her case plan, but it expressed a concern that she "ha[d] not been able to exhibit behaviors that show[ed] that she [was] able to plan for [the minor's] care safely and independently." She had not been able, despite available comprehensive medical insurance, to address "her pain, migraines, and insomnia in order to create stability in her own life and therefore her child. Although she ha[d] participated in weekly therapy, [Mother had] demonstrated an extremely limited capacity to reflect on her own past and current behaviors that represent[ed] risk to her daughter."

The therapeutic visit supervisor reported that "it appear[ed] very difficult for [Mother] to anticipate [the minor's] needs." The supervisor indicated that "although [Mother] ha[d] made some improvement very recently in reading [the minor's] mood, that for the majority of the months that she ha[d] been supervising visits it appeared almost 'as if mom was having a separate conversation [from [the minor]].'"

Father had participated in services between June and December 2014, but had stopped participating when he relapsed by using marijuana, Vicodin, and alcohol, and by engaging in criminal activity. He attempted suicide in January 2015 by using alcohol and prescription medication. As of April 2015, Father was living in a dual-diagnosis recovery home.

The Department indicated that the visitation order, including level of supervision, had remained unchanged throughout the proceedings. It concluded that although the parents' compliance had been adequate, "[t]here ha[d] not been consistent or substantive progress in the area of either parent's capacity to safely and independently parent the minor so as to indicate an increase in visit time or a decrease in level of supervision."

The Department concluded it had the same concerns about each parent's ability to supervise and protect the minor that existed at the outset of the dependency proceedings, including concerns about "[F]ather's pattern of severe substance abuse and mental illness resulting in neglect, and [M]other's unstable mental health and failure to protect [the minor] from abuse and neglect on the part of [F]ather." The Department recommended that Mother's and Father's reunification services be terminated.

On May 1, 2015, the court conducted a six-month review hearing that was contested by Mother. It concluded the return of the minor to either parent's custody would create a substantial risk of detriment to the minor's safety, protection, or physical or emotional well-being. The court set a permanency planning hearing and terminated Mother's and Father's reunification services.

IV. Department's Permanency Planning Report

On August 20, 2015, the Department submitted its report in anticipation of the section 366.26 permanency planning hearing. It noted the minor (1) had no special medical needs, (2) was developmentally on-track, (3) was not yet of school age, (4) was not attending preschool, and (5) had been participating in weekly sessions with a mental

health counselor to reduce her symptoms of anxiety, depression, aggression, sleep disturbance and emotional dysregulation.

The Department detailed the minor's relationship with M.M., her caretaker. M.M. indicated she was in a long-term (over 15 years) committed relationship with a man, M.R., with whom she lived. M.R. indicated that he felt he had a role as the minor's grandfather figure, and the minor "refer[red] to him as 'paw-paw [*sic*].'" M.M. had been consistently involved in the minor's life since the minor was five months old (approximately February 2012). Mother, Father, and the minor had lived on M.M.'s property from that time until May 2013, when Father was granted sole physical custody of the minor. M.M. continued to be close to the minor "as a fill-in caregiver and significant source of support to [Father] as a single parent." For the entire 13 months since the minor's removal in July 2014, M.M. had been the minor's sole caregiver.

Since July 2014, M.M. had (1) provided for the minor's basic physical needs; (2) been solely responsible for her clothing and diaper requirements; (3) participated in the minor's support such as her weekly therapy sessions; and (4) involved the minor in special activities such as swimming lessons. The minor said she felt " 'happy' " living in M.M.'s home. The social worker indicated she had had many opportunities to witness the interactions between M.M. and the minor. The social worker concluded "[the minor] looks to [M.M.] for support, comfort and guidance and responds to her boundaries and explanations with confidence and understanding." The social worker noted that the minor had consistently referred to M.M. as " 'Mimi,' " but had started to call her " 'Mommy' in January of 2015."

M.M. expressed a commitment to pursue the minor's adoption as a single parent and indicated she understood the legal, financial, and other responsibilities associated with prospective adoption. M.M. told the Department she had " 'never had a second thought' about her commitment to [the minor] . . . and as an adoptive parent to [her]."

M.M. also expressed a desire to maintain supervised contact between the minor and her “biological parents provided the interactions are safe and healthy for [the minor].”

The Department reported that since the termination of reunification services on May 1, 2015, the parents’ supervised visitation with the minor had been reduced from twice weekly to once per month. When visits were first reduced, the visitation supervisor had observed that Mother’s difficulty in “moderating her emotional reactions” had impacted the minor’s mood. The minor often looked to the visitation supervisor, rather than Mother, for support. The Department noted that “[a]s visits have decreased in frequency, it actually appears that the quality of the visits has improved.”

In assessing visitation in relationship to the possible termination of parental rights, the Department noted that it was required to evaluate whether “the contact is characterized more as a parent-child relationship or as a friend/peer visiting relationship.” The Department made the following observations: “[The minor] frequently looks to others (such as the visit supervisor) for parental role tasks such as changing a diaper/using the restroom, carrying her out to the car, or for emotional support during times of stress while in visits. It has been [M.M.] who has consistently provided items required for [the minor’s] safety and well-being . . . for the duration of this dependency case, despite prompting by the Department for parents to be involved in this aspect of [the minor’s] life. Especially being that the quality of the visits appears to have improved since the frequency and duration of the contact was reduced, it appears that the relationship is positive but that it is more of a friendly visiting relationship than that of a parent-child relationship . . . The Department recognizes the close bond that [the minor] has with both of her parents[. H]owever, it appears that this bond is actually strengthened when some of the stressors of the day-to-day parenting tasks are handled by another person.”

The Department recommended that the juvenile court select adoption of the minor as the permanent plan. It reasoned that the minor was “a radiant young girl who can be

described as both generally and specifically adoptable.” The Department stated further that “[Mother’s] capacity to act as a safe and protective parent at the present time is significantly impacted by her lack of insight into her mental health and limited understanding of a safe and supportive environment for a child.” It noted that since the termination of services, Mother had had only “intermittent contact” with the social worker. Mother’s housing situation did not allow her to have a child present, and her “insight into [her] previous behavior has not changed.” Similarly, the Department observed that “[Father’s] capacity to act as a safe and protective parent continues to be hindered by serious mental illness and substance abuse.” The Department concluded “[the minor] has a ‘visiting’ relationship with both parents and she looks to her current caregiver [M.M.] for parental care and support. It would not be detrimental to terminate parental rights and the benefits to [the minor] in having the security and stability of an adoptive home outweigh[] any benefit [of] maintaining parental rights.”

V. CASA Report

Sarah Lockwood, the Court Appointed Special Advocate (CASA), reported that since her appointment by the court in January 2015, she had enjoyed visits with the minor and had engaged in activities such as trips to parks and playgrounds, nature walks with Lockwood’s dog, wading in the river, and general play time. Lockwood described the minor as bright, creative, compassionate, social, and energetic. From observing the minor with M.M. on a number of occasions, Lockwood observed that the minor appeared to “be[] comfortable and at home in her placement, having happily adapted to her large family of supportive adults.” Lockwood also reported that she had “witnessed [the minor’s] strong emotional bond with her grandmother. [The minor] loves to hug her and be close to her, and will often pick a flower during our visit to bring home and give to ‘Mimi.’” Lockwood concluded that “[the minor] gives every indication of being well adjusted in her placement.”

VI. *September 2015 Permanency Planning Hearing*

At the permanency planning hearing held on September 11, 2015, Father agreed to submit the matter on the basis of the Department's report. Mother opposed the recommendations of the Department. After receiving evidence and hearing argument (discussed, *post*), the juvenile court found by clear and convincing evidence that the minor was specifically adoptable, and it approved the permanent plan of adoption. The court held further that Mother had not established the beneficial parent-child relationship exception, concluding there was no compelling reason for finding that termination of parental rights would be detrimental to the minor. Accordingly, the court terminated the parental rights of Mother and Father. It set a postpermanency review hearing for February 11, 2016.

Mother filed a timely notice of appeal. That order is one from which an appeal lies. (§ 366.26, subd. (i)(1); see *In re Matthew C.* (1993) 6 Cal.4th 386, 393, superseded by statute on another point as stated in *People v. Mena* (2012) 54 Cal.4th 146, 156.)

DISCUSSION

I. *Applicable Law*

A. *Dependency Law Generally*

Section 300 et seq. provides “a comprehensive statutory scheme establishing procedures for the juvenile court to follow when and after a child is removed from the home for the child’s welfare. [Citations.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52.) As our high court has explained, “The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect. [Citations.] The Legislature has

declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

After it has been adjudicated that a child is a dependent of the juvenile court, the exclusive procedure for establishing the permanent plan for the child is the selection and implementation (permanency planning) hearing as provided under section 366.26. The essential purpose of the hearing is for the court “to provide stable, permanent homes for these children.” (§ 366.26, subd. (b); see *In re Jose V.* (1996) 50 Cal.App.4th 1792, 1797.) There are six statutory choices for the permanency plan; the preferred choice is adoption, coupled with an order terminating parental rights. (§ 366.26, subd. (b); see also *In re Celine R.*, *supra*, 31 Cal.4th at p. 53 [“Legislature has thus determined that, where possible, adoption is the first choice”]; *ibid.* [where child is adoptable, “adoption is the norm”].) The court selects this option if it “determines . . . by a clear and convincing standard, that it is likely the child will be adopted.” (§ 366.26, subd. (c)(1).)

Thus, at the permanency planning hearing, “in order to terminate parental rights, the court need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated. . . . [T]he critical decision regarding parental rights will be made at the dispositional or review hearing, that is, that the minor cannot be returned home and that reunification efforts should not be pursued. In such cases, the decision to terminate parental rights will be relatively automatic if the minor is going to be adopted.’ [Citation.]” (*In re Cynthia D.* (1993) 5 Cal.4th 242, 249-250.)

“If the court determines it is likely the child will be adopted, certain prior findings by the juvenile court (e.g., that returning the child to the physical custody of the parent would create a substantial risk of detriment to the physical or emotional well-being of the child) shall constitute a sufficient basis for the termination of parental rights unless the

juvenile court finds one of six specified circumstances in which termination would be detrimental [to the child].” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1522-1523, citing § 366.26, subd. (c)(1).) One such circumstance—the one asserted by Mother here (and discussed, *post*)—is the beneficial parental relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).) The six specified circumstances in section 366.26, subdivision (c)(1)(B) are “actually *exceptions* to the general rule that the court must choose adoption where possible.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53.) They “ ‘must be considered in view of the legislative preference for adoption where 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.” (*Ibid.*, original italics.)

B. Beneficial Parental Relationship Exception

Under the beneficial parental relationship exception, the parent must establish that he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) This requires a two-prong showing by the parent that (1) he or she has maintained regular visitation, and (2) the child would benefit from continuing the relationship. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) “ ‘Sporadic visitation is insufficient to satisfy the first prong . . .’ of the exception.” (*Ibid.*, quoting *In re C.F.* (2011) 193 Cal.App.4th 549, 554.) In order to establish the second prong, the parent must show “that ‘severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.’

[Citation.]” (*In re Marcelo B.*, at p. 643, original italics, quoting *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The burden is on the parent asserting the beneficial parent relationship to produce evidence establishing that exception. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527.)

In determining whether the beneficial parental relationship exception applies, the court balances the degree of benefit that a continuation of the parental relationship would afford versus the benefit of placing the child with adoptive parents. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) As one court has explained: “[W]e interpret the ‘benefit from continuing the [parent/child] relationship’ exception to mean 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.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Application of the beneficial relationship exception is a case-specific endeavor. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575-576.) “ ‘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.’ [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.)

C. Standard of Review

Review of a court's determination of the applicability of the beneficial parental relationship exception under section 366.26 is governed by a hybrid substantial evidence/abuse of discretion standard. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) As this court explained in *In re Bailey J.* with respect to the first part of this hybrid standard: "Since 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.)

This court explained the second component of the hybrid standard of review as follows: "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." (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, original italics; see also *In*

re J.C. (2014) 226 Cal.App.4th 503, 530-531 [following *In re Bailey J.*]; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 [same].)

II. *The Beneficial Parental Relationship Exception*

A. Background Concerning Parental Relationship Exception

At the permanency planning hearing on September 11, 2015, the court received documentary evidence submitted by the Department and by Mother, who also testified. The documents considered by the court included the Department's section 366.26 report of August 20, 2015 (discussed in detail, *ante*); attachments to the report, such as reports concerning visitation of the minor by the parents; the report of the CASA representative, Sarah Lockwood; letters from Mother and from Walnut Avenue Women's Center; and visitation logs.

In an undated letter to the court, Mother indicated she had stable housing and the support of her family in Los Angeles. She stated she wanted to return to Los Angeles to care for her ailing mother, but did not want to do so without having her daughter with her. She noted that she had complied to the best of her ability with her case plan; had "received positive feedback from the visitation supervisors all along," but the positive feedback was "not supported in the court paperwork"; and she felt there was "no justification for the termination of her parental rights." Mother expressed concern that M.M.'s adoption of the minor might result in the minor repeating the same "dangerous behaviors" as Father, since M.M. had raised Father. Mother stated she loved the minor and requested that the court allow her to be the minor's mother. Finally, Mother indicated she had been "sent to the BHU because [Father] was beating [her], not because [she] wanted to hurt [the minor]." Mother stated she had "never even ever been angry at [the minor]."

Mother testified that the minor was in her care from birth to when she was approximately 19 months old. She said she had consistently visited the minor throughout the dependency proceedings in accordance with the visitation schedule. She contended

that she and the minor “interact like mom and daughter [during the visits]. We play. I read to her. She brings these . . . electronic tablets [that] have . . . little educational games. I try to interact and do those with her so that she’s able to learn and recognize the ABC’s and 1-2-3’s.” She said the minor calls her “ ‘Momma,’ ” and the minor is excited to see her on the visits, giving her “what [the minor] calls ^[c]attack hugs.^[b] ”

Mother testified she was not in agreement with the Department’s recommendation for termination of her parental rights because she is the minor’s mother; she had attempted to raise her for the first 19 months of her life before “all this ordeal started”; she felt she should be given the chance to raise the minor; and she wanted to continue her relationship with her child.

The visitation logs submitted by the Department and Mother covered the period of February 10 to September 1, 2015. The logs reflect that Mother had 24 supervised visits with the minor during that time period. The records also indicate that Mother did not show for one scheduled visit. She also canceled four scheduled visits, three due to illness.

The court heard argument from the parties. The Department’s counsel argued the minor was adoptable, parental rights should be terminated, and the beneficial parental relationship exception was inapplicable. The minor’s counsel also argued in support of the adoptability finding and the termination of parental rights. Mother’s counsel did not contest that the minor was adoptable. Mother’s counsel argued, however, that the record supported application of the beneficial parental relationship exception, based upon factors such as (1) the very positive interactions between Mother and the minor during visitation, (2) the minor’s young age; and (3) Mother’s involvement as caretaker for nearly two years at the beginning of the minor’s life.

After finding the minor to be specifically adoptable, the court concluded there was no compelling reason for finding that termination of parental rights would be detrimental to the child. The court acknowledged that the visitation logs showed Mother had

experienced “wonderful” interactions with her daughter. But the court also observed that the record showed the minor had had a very close relationship with her grandmother, M.M., for nearly her entire life, and M.M. had taken full responsibility for all of the minor’s needs. The court also noted that the minor had repeatedly identified M.M. as her primary caregiver during visits. After noting it was required ‘to go through a difficult weighing and balancing’ process, the court held that Mother had not met her burden of showing by a preponderance of the evidence “that her relationship outweighs the stability that [the minor] is currently receiving in the care of [M.M.]”

B. The Juvenile Court Did Not Err In Concluding Mother Had Not Established The Beneficial Parental Relationship Exception

Mother asserts “there was undisputed evidence [she] had regularly visited the child and that the child would benefit from that relationship.” She argues, therefore, that the only issue is whether the court, conducting the balancing process, abused its discretion by failing to conclude that “the existence of that relationship constitute[d] a ‘*compelling reason* for determining that termination [of parental rights] would be detrimental.’” (*In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315, original italics.)

We first consider whether Mother established the beneficial parental relationship by a preponderance of the evidence by showing (1) regular visitation, and (2) that the child would benefit from continuing the relationship. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643.) The court found there had been regular visitation and contact by Mother, and this conclusion is supported by substantial evidence. (*In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) But the court did not find that the minor would benefit from continuing the relationship with Mother.

Contrary to Mother’s assertion that the undisputed evidence showed both that she regularly visited the minor *and* the minor would benefit from that relationship, the evidence was not clear on the second point. Since Mother, as the proponent of the exception, had the burden of producing evidence showing its existence (*id.* at p. 1314),

the court's conclusion that she did not satisfy the second prong of the exception "turns on a failure of proof at trial, [such that] the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]" (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) The evidence does not compel such a finding.

To determine whether the relationship between parent and child is beneficial, we look to such factors as "(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. [Citation.]" (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 467, fn. omitted.) In this regard, Mother emphasizes the second factor by asserting that she had custody of the minor during the first 20 months of her life. But we must consider all factors bearing upon the question, including the other three factors identified in *In re Angel B.* (See *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [matters to consider in determining whether parental beneficial relationship exception applies "include" four factors identified in *Angel B.*].)

The age of the minor (four) favored her adoptability. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) The minor had lived with Mother and Father from her birth in September 2011 to May 2013. But the minor's paternal grandmother and current caretaker, M.M., had been in close contact with the minor from approximately February 2012, when Mother, Father, and the minor returned to Northern California and began living on M.M.'s property. From May 2013 to July 2014, the minor was in Father's exclusive custody, but M.M. acted as a substitute caregiver and provided support to Father. And M.M. had been the minor's primary caregiver, "provid[ing] a stable placement for [her]," for the entire 14 months of the dependency proceeding.

There was also evidence of negative interactions between Mother and the minor early in the minor's life, including the minor's exposure to (1) domestic violence incidents between Mother and Father, and (2) the episode in May 2013 in which Mother

threatened members of her household (including the minor), threatened suicide, and was ultimately hospitalized on a section 5150 psychiatric hold. Although interactions between Mother and the minor during supervised visitation were generally positive, the Department noted in its permanency planning report that the minor “frequently look[ed] to others (such as the visit supervisor) for parental role tasks such as changing a diaper/using the restroom, carrying her out to the car, or for emotional support during times of stress while in visits.” The Department reported further that “[Mother’s] capacity to act as a safe and protective parent at the present time is significantly impacted by her lack of insight into her mental health and limited understanding of a safe and supportive environment for a child.” The Department concluded “[the minor] has a ‘visiting’ relationship with both parents and she looks to her current caregiver [M.M.] for parental care and support.”

Mother offered no bonding study or other evidence showing that termination of parental rights would have a significant (or even any) detriment on the minor’s life. (See *In re C.F.*, *supra*, 193 Cal.App.4th at p. 557.) And the social worker opined in her report that the termination of parental rights would not be detrimental to the minor, in light of the prospective benefits of security and stability adoption would provide.

The social worker also observed in the permanency planning report that M.M. had (1) been providing for all of the minor’s needs; (2) made the minor her first priority by organizing her home to accommodate the minor’s toys and belongings; (3) taken the extraordinary step of conducting extensive research to better understand and address the minor’s behaviors; and (4) had “a keen awareness of [the minor’s] changing moods and ha[d] a calm and caring intervention style.” Both the social worker and the CASA representative, Sarah Lockwood, indicated the minor was very comfortable within her home environment and was very loving towards her grandmother.

There was evidence that the Mother’s contacts with the minor during supervised visitation were positive—“wonderful” in the words of the trial court. But even if the

Mother and the minor may have had “a loving and happy relationship” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419), or “frequent and loving contact or pleasant visits” (*In re C.F., supra*, 193 Cal.App.4th at p. 555), these factors would not satisfy Mother’s burden of showing the existence of a beneficial parental relationship. In short, there was a failure of proof by Mother that the beneficial parental relationship exception applied. Thus, “the evidence [does not] compel[] a finding in favor of the appellant as a matter of law. [Citations.]” (*In re I.W., supra*, 180 Cal.App.4th at p. 1528.)

But even if Mother had met her burden to show the existence of a beneficial parental relationship—which burden she did not satisfy—her appellate claim nonetheless fails. Mother was also required to show that the beneficial parental relationship presented “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) This 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.]” (*In re Bailey J., supra*, 189 Cal.App.4th at p. 1315, original italics.)

The indisputable evidence was that the minor was adoptable. She had been living in a stable home with M.M., her prospective adoptive parent, for approximately 14 months. She had had a close relationship with M.M. for all but the first four months of her life. She was confident and comfortable in her grandmother’s home, was very loving toward M.M., and M.M. showed a strong commitment to assuming a permanent role in the minor’s life.

Balanced against this evidence was evidence that Mother’s relationship with the minor—according to the Department—although positive, was “more of a friendly visiting relationship than that of a parent-child relationship.” Mother—who had not had a caretaker role in the minor’s young life for 27 months—was oftentimes during visits *not* the person to whom the minor looked for emotional support and to perform parental-type

tasks. And, as the frequency of visits decreased after the court terminated Mother's reunification services, the Department noted that the quality of the visits actually improved. The juvenile court construed this circumstance as "support[ing] the notion that the stability that [the minor was] . . . receiving and the emotional maturity that [the minor had] been able to develop in the secure and stable environment that she [was] living in with [M.M.] really outweigh[ed] that loving and tender relationship that[had been] shown between [the minor] and [Mother]."

As noted, to establish the second prong of the beneficial parental relationship exception, the parent must show "that 'severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.'" (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643, original italics, quoting *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) The mere fact there may be *some* benefit to the continuation of the parent-child relationship is insufficient to satisfy this prong. (*In re Marcelo B.*, at p. 643.) Mother, who had been unsuccessful in reunifying with the minor, "may not derail [the] adoption" based on a "*some* benefit" showing. (*Ibid.*, original italics.)

Mother relies on *In re S.B.* (2008) 164 Cal.App.4th 289 to support her contention that she established the beneficial parental relationship exception. There, the father introduced into evidence at the permanency planning hearing a bonding study (*id.* at p. 295) in which a professional "concluded that, because the bond between [the father] and S.B. was fairly strong, there was a potential for harm to S.B. were she to lose the parent-child relationship." (*Id.* at p. 296.) The social worker noted that the father, during visits, had " 'demonstrate[d] empathy and the ability to put himself in his daughter's place to recognize her needs.' " (*Id.* at p. 294.) The court noted that the father had been S.B.'s primary caregiver for three years. (*Id.* at p. 298.) It also observed that the father's "devotion to S.B. was constant, as evinced by his full compliance with his case plan and continued efforts to regain his physical and psychological health." (*Id.* at p. 300.) And it

noted that “S.B. derived comfort, affection, love, stimulation and guidance from her continued relationship with [her father].” (*Ibid.*) The appellate court concluded the juvenile court had “erred when it found the continuing beneficial relationship exception did not apply and terminated parental rights. [Citation.]” (*Id.* at p. 301.)

But that same court—Division One of the Fourth District Court of Appeal—has twice emphasized that its decision in *In re S.B.* must be viewed in the context of the unique facts of that case. In *In re Jason J.* (2009) 175 Cal.App.4th 922, 937, the court stated: “The *S.B.* opinion must be viewed in light of its particular facts. It does not, of course, stand for the proposition that a termination order is subject to reversal whenever there is ‘some measure of benefit’ in continued contact between parent and child.” And in *In re C.F.*, *supra*, 193 Cal.App.4th at pages 558 to 559, the court held: “[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 parental contact. As *Autumn H.* points out, contact between parent and child will always ‘confer some incidental benefit to the child,’ but that is insufficient to meet the standard. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)”

Here, unlike in *In re S.B.*, there was no bonding study introduced by Mother demonstrating a strong parent-child bond and/or indicating the termination of parental rights would be detrimental to the minor. Further, the record contained evidence from which it could be inferred that the minor might be negatively impacted emotionally if she were to lose the stability of the prospective adoptive home offered by her caretaker and grandmother, M.M. And unlike in *In re S.B.*, Mother offered no opinions by an expert or a social worker that the minor would be harmed by the loss of her relationship with her mother. To the contrary, there was evidence that the termination of parental rights would not be detrimental to the minor.

In her reply brief, Mother asserts her case is similar to *In re Amber M.* (2002) 103 Cal.App.4th 681. But the following brief description of *In re Amber M.* demonstrates, without further elaboration, that *In re Amber M.* (like *In re S.B.*) offers no support for Mother's claim of error: "*In Amber M., supra*, 103 Cal.App.4th at page 690, the court reversed termination of parental rights where a psychologist, therapists, and the court-appointed special advocate uniformly concluded 'a beneficial parental relationship . . . clearly outweigh[ed] the benefit of adoption.' Additionally, two older children had a 'strong primary bond' with their mother, and the younger child was 'very strongly attached to her.' (*Ibid.*) If the adoptions had proceeded, the children would have been adopted in separate groups. (*Id.* at pp. 690-691.)" (*In re J.C., supra*, 226 Cal.App.4th at p. 533.)

The court below did not abuse its discretion in determining that Mother had failed to establish the second prong required for the parental beneficial relationship exception, "that 'severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.'" (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 643, original italics, quoting *In re Angel B., supra*, 97 Cal.App.4th at p. 466.) The court's implicit conclusion in finding the exception inapplicable was not one that " 'exceeded the bounds of reason.'" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

This is not a case involving "*exceptional circumstances* [citation] [in which the court is permitted] to choose an option other than the norm, which remains adoption." (*In re Celine R., supra*, 31 Cal.4th at p. 53.) We thus find that there was substantial evidence supporting the trial court's conclusion that Mother failed to establish the existence of the beneficial parental relationship between her and the minor, and the court did not abuse its discretion by finding that any purported existence of such a relationship did not present a compelling reason to apply this statutory exception in lieu of adoption.

DISPOSITION

The September 11, 2015 order approving adoption as the permanent plan for H.B. and terminating the parental rights of Mother and Father is affirmed.

Márquez, J.

WE CONCUR:

Rushing, P. J.

Grover, J.