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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re K.O., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B280385  
(Super. Ct. No. J071040)  
(Ventura County)

VENTURA COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.K., et al.,

Defendants and Appellants.

K.K. (Mother) and D.O. (Father) appeal an order terminating parental rights to their son, K.O., and selecting adoption as the permanent plan. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother contends the juvenile court erred in finding the beneficial

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

parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) did not apply. Father joins Mother's argument "to the extent those arguments inure to his benefit." We affirm.

### BACKGROUND

When K.O. was born, Mother and K.O. both tested positive for opioids. Mother was prescribed an opioid (Norco) by a physician, which may have caused the positive opioid test. But days later, she and K.O. tested positive for methamphetamine.

Mother admitted to a history of substance abuse, including methamphetamine. In 2004, she had another child removed from her custody after both she and the child tested positive for methamphetamine at the child's birth. At that time, Mother was offered reunification services, which she completed successfully. However, she no longer has custody of that child and three other children because she was incarcerated in 2013 to 2014.

Mother has an extensive criminal history, including but not limited to drug offenses. She has mental health issues (anxiety and depression), for which she was prescribed medication, but she no longer takes medication or receives treatment.

At the time of K.O.'s birth, Father was serving a two-month jail term. He was incarcerated again during the dependency process.

Ventura County Human Services Agency (HSA) removed K.O. from Mother's custody seven days after his birth, and placed him with his maternal grandmother, where he has remained. HSA filed a petition alleging that K.O. came within the juvenile court's jurisdiction for failure to protect (§ 300, subd. (b)), no provision to support (§ 300, subd. (g)) (only as to Father),

and abuse of a sibling (§ 300, subd. (j)). After Mother waived her right to a contested jurisdiction/disposition hearing and Father failed to appear, the court sustained the section 300 petition and bypassed reunification services for both parents.

Mother consistently participated in weekly supervised visits. She acted appropriately during these visits, and K.O. appeared to enjoy them. She maintained a routine that included feeding, burping, and changing K.O. When Father was released from jail, he participated in these visits, and K.O. appeared generally happy during them. Throughout the visits, the parents worked as a team. K.O. babbled, smiled, and giggled during these visits. He did not appear distressed afterwards, nor did he show any disruption in his behavior.

K.O. has developed an attachment to his maternal grandmother. She has provided a comfortable and happy home environment for him, and he looks to her to provide care. She also has custody of one of K.O.'s half sisters, who cares for him and treats him like a sibling. Grandmother expressed her commitment to adopt K.O.

At the contested section 366.26 hearing, the court determined that the beneficial parental relationship exception did not apply and terminated parental rights. It found that Father did not meet the requirements of the exception because he did not have consistent visits. Although Mother had consistent visits that were "pleasant," the court found that they were insufficient to "create the kind of bond that the law recognizes outweighs the benefits of adoption."

#### DISCUSSION

At a section 366.26 hearing, the juvenile court determines a permanency plan for a dependent child, which

includes adoption. If the child is adoptable, there is a strong preference for adoption over other permanency plans. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395.) To avoid termination of parental rights and adoption under the beneficial parental relationship exception, the parent has the burden to show that (1) he or she has maintained regular visitation and contact with the child, and (2) the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)

In determining if the exception applies, the juvenile court looks to whether the parental 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. . . . 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.)

The existence of a beneficial parental relationship is determined by several factors such as the age of the child, the portion of the child’s life spent in parental custody, the quality of the interaction between parent and child, and the child’s particular needs. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) The parent must show “more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

We apply a substantial evidence standard to the factual issues of whether a beneficial parental relationship exists, and an abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination

would be detrimental to the child. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

Substantial evidence supports the finding that the beneficial parental relationship exception does not apply. The evidence shows only that Mother had pleasant, supervised weekly visits with K.O., but not a “substantial, positive emotional attachment” that outweighed the benefits the child would receive in a permanent household. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although Mother maintained regular weekly visitation, K.O. has spent virtually all of his life in his grandmother’s care. Mother has persistent substance abuse issues. She used methamphetamine while pregnant with another child, which led to dependency proceedings. The pattern was repeated with K.O. She received reunification services in her prior case, but she has not learned from that experience and has not addressed the issues that led to the removal of her other child.

To the extent that Father contends he had a beneficial relationship with K.O., substantial evidence supports the court’s finding that he did not have consistent visits. Father was incarcerated twice during the short period of the dependency case. In any event the record shows no more than pleasant visits, and not a parental relationship that outweighs the benefits of adoption.

The court did not abuse its discretion in terminating parental rights and finding that K.O. would be better served by adoption.

DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

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Appeal, for Defendant and Appellant K.K.

Deborah Dentler, under appointment by the Court of  
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