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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ANGEL E., a Person
Coming Under the Juvenile Court
Law.

B287033

(Los Angeles County
Super. Ct. No. DK06861)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROSIE E.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Steff Padilla, Juvenile Court Referee.
Affirmed.

Joseph T. Tavano, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Rosie E., the mother of now-10-year-old Angel E., appeals the juvenile court's December 4, 2017 order terminating her parental rights under Welfare and Institutions Code section 366.26.¹ Rosie contends the court erred in ruling she had failed to establish the parent-child-relationship exception (§ 366.26, subd. (c)(1)(B)(i)) or the sibling-relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(v)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initiation of Dependency Proceedings and Removal of Angel

The Los Angeles County Department of Children and Family Services (Department) first learned of Angel's family in August 2014 when it received a referral stating Rosie had tested positive for methamphetamine after arriving at a homeless shelter with Angel, then five years old. Also with Rosie at the homeless shelter was her daughter Valerie P., then 15 years old, who had tested positive for marijuana.

A Department social worker interviewed Rosie, who stated she and the children had been homeless since she had left an abusive relationship two weeks earlier. She said the abuse had been "constant and it often occurred in the presence of the

¹ Statutory references are to this code unless otherwise stated.

children.” Rosie and the children had been staying with friends or sleeping in their car; but at the urging of friends, family and church members, Rosie took the children to the homeless shelter.

Upon arrival at the shelter Rosie was told it was the shelter’s policy to administer a drug test. She was hesitant to consent because she knew she would test positive for methamphetamine. However she agreed because she believed the shelter could help her with her drug addiction. Rosie stated she had been using methamphetamine for many years except during a period of incarceration in 2012. She said she had last used methamphetamine two days earlier after Angel and Valerie had gone to sleep. Despite stating she hoped the shelter would assist her with her drug use, Rosie explained she did not think using methamphetamine was a problem because it was the same thing as someone being prescribed amphetamine to treat attention deficit disorder. Rosie said she had been diagnosed with bipolar disorder and methamphetamine helped her to relax when she was having “crazy thoughts.” She also said she often had suicidal thoughts, including on the day of the interview.

Rosie informed the social worker Angel had not started school due to their unstable living situation. Valerie was enrolled in school but was absent often. Rosie admitted she knew Valerie used marijuana but said she had never used drugs with Valerie. Valerie’s father, Mervin P., who is also the father of Rosie’s two adult daughters, Amber T. and Desiree P., had not been active in Valerie’s life. Rosie did not know the identity of Angel’s father. The social worker observed Rosie had extreme mood changes throughout the interview, vacillating between being very happy and very sad.

The social worker also interviewed Valerie, who was dressed and groomed appropriately with no visible marks or bruises. Valerie reported feeling safe with Rosie and said Rosie took good care of her and Angel. Valerie said she missed most of 10th grade but hoped to return to school once the family had housing. She admitted to experimenting with drugs, mainly marijuana. She said she tried methamphetamine two days earlier, but she did not like it. She said she had never used drugs with her mother. Valerie reported she had been staying with her father but refused to go back to his home after a fight two weeks earlier. She said she wanted to stay with Rosie and Angel.

Angel refused to be interviewed, but the social worker observed he was dressed and groomed appropriately and appeared to be comfortable with Rosie and Valerie.

At the conclusion of the interviews the social worker informed Rosie the children were being taken into protective custody. Rosie became aggressive, and five police officers were needed to restrain her while the social worker took custody of Angel and Valerie.

The next day the social worker interviewed Mervin. He stated Valerie had been living with Rosie until a month earlier, when Rosie told him she could no longer care for Valerie. Mervin agreed Valerie could live with him. After two weeks of living with Mervin, Valerie got upset with him over some messages he sent Rosie and refused to remain in his home. Mervin had been trying to reach Valerie but had been unable to locate her. He believed Amber and Desiree may have known where Rosie and Valerie were, but they would not tell him. Mervin reported Valerie loves Angel and “constantly worries about him because [Rosie] doesn’t always take good care of him.”

Valerie was released to Mervin's custody pending the detention hearing. Angel was placed in the home of Rosie's sister, Christina P.

On August 13, 2014 the Department filed a petition to declare Valerie and Angel dependent children of the juvenile court under section 300, subdivisions (b) and (j), alleging failure or inability to protect based on Rosie's substance abuse and mental health problems and Rosie's failure to obtain substance abuse counseling for Valerie. At the detention hearing the court found a prima facie case for detaining the children and ordered them placed in the temporary custody of the Department. Angel remained in Christina's home, and Valerie remained placed with her father. The court ordered reunification services for Rosie, including low cost referrals for housing and weekly random drug testing.

2. The Jurisdiction/Disposition Hearing

The September 30, 2014 jurisdiction/disposition report contained a summary of an interview with Rosie on September 18, 2014. The social worker observed Rosie was apprehensive about providing information regarding the allegations in the petition. Rosie complained she had been honest with the shelter that she would test positive for drugs when she arrived, but they betrayed her by calling the police. She said she had been prescribed medication for her bipolar disorder while she was incarcerated in 2012 but stopped taking it in 2013 because it made her feel sleepy and unable to function properly. She explained taking methamphetamine helped her be more alert and feel normal. Rosie admitted she had been using methamphetamine a few times a week since before Angel was born. She said she never used methamphetamine while the

children were with her; she would leave them with family members while she was using.

Rosie repeated her theory that taking methamphetamine was no different from taking medication prescribed for attention deficit disorder, saying, “They use methamphetamines in Adderall, which is what they give people with ADD. I’ve read a lot and know that methamphetamine is one of the ingredients used in Adderall. Why would they say that using meth is illegal when they put [it] in Adderall? Look it up and you’ll see.” The social worker attempted to explain the differences between methamphetamine and amphetamine, but Rosie “continued to state the two were the same and justified her methamphetamine use several times.”

Rosie reported she was still homeless and was staying with various friends. She refused to provide an address to the social worker. Rosie expressed frustration with the Department, stating nothing in the detention report had been true. When told she was being given the opportunity to correct the record, she said she did not trust social workers because she was always betrayed by them. Rosie claimed she was in the process of enrolling in court-ordered services but did not provide any details. At various points in the conversation the social worker observed Rosie appeared confused, repeatedly asked the same questions, had difficulty staying on topic, became frustrated and was hesitant to provide information. The social worker concluded Rosie did not grasp the severity of her substance abuse, did not recognize the reasons her children were removed from her care and had a lack of insight and awareness as to how her behavior affected her children.

Valerie told the social worker she had been aware Rosie was using methamphetamine for approximately seven years. She said Rosie told her she was using, but she also “just knew” because Rosie began acting differently and affiliating with people that were “no good for her.” However, Valerie stated Rosie was a “good mom and takes care of us.”

The jurisdiction/disposition report also contained details of an interview with Angel. Angel said he could not remember his living situation before being placed with Christina, but he did remember the family was homeless and would sometimes stay with his grandfather or an aunt. When asked about coming to the shelter, Angel appeared on the verge of tears and said he did not want to talk about it and did not want to remember. The social worker reported Angel was very well spoken, appeared to be bright and learns very quickly. Angel had been enrolled in kindergarten since living with Christina, was eager to attend school and had made several friends.

Rosie had not visited with Angel in the three weeks since the detention hearing because Christina had not understood visits were permitted. Christina told the social worker she would not be willing to monitor visits in the future because Rosie tended to be confrontational with her and she did not believe Rosie would follow court orders. Rosie did have some telephone contact with Angel during September 2014. However, Christina reported she had to end the calls prematurely because Rosie would raise inappropriate topics, such as her friends who had been arrested or telling Angel that Christina would not allow her to visit him.

Despite concerns regarding Rosie’s ability to understand and address her substance abuse and mental health issues, the Department recommended reunification services be provided.

A combined jurisdiction/disposition hearing was held on October 3, 2014. The juvenile court dismissed the allegation of medical neglect for failing to seek substance abuse counseling for Valerie.² The court sustained the allegations relating to Rosie's substance abuse and mental health problems and declared the children dependents of the court.³ The court ordered family reunification services and monitored visitation three times a week for three hours with monitors other than Christina and Mervin. Rosie's court-ordered case plan required enrollment in a substance abuse program, weekly random or on-demand drug testing, and mental health counseling.

3. The Six-month Review Hearing and Rosie's Compliance with Her Case Plan

Rosie was ordered to drug test seven times between December 2014 and March 2015. She failed to appear for any of the seven tests. As of March 31, 2015 Rosie's housing situation remained unstable. She had been living at a motel and with friends. She continued to refuse to provide the address of where she was staying. Rosie declined assistance in finding a shelter, stating she would have an apartment soon. Rosie had been

² The minute order for the jurisdiction/disposition hearing does not address the allegation of substantial risk of neglect to a sibling pursuant to section 300, subdivision (j). However, because the allegation was identical to, and contingent upon, the dismissed allegation, it appears the subdivision (j) allegation was also dismissed.

³ Jurisdiction over Valerie was ultimately terminated in December 2015. Joint legal custody was granted to Mervin and Rosie, and sole physical custody was granted to Mervin with Rosie to have monitored visitation.

receiving mental health services from Full Service Partnership since September 2014, but the Department was informed in March 2015 that Rosie was in danger of being discharged from the program due to failure to take her prescribed medication. Rosie continued to blame others for her situation, telling the Department social worker her sister was “sneaky” and had sent her to the shelter so she would test positive for drugs and have her children taken away.

Between November 2014 and February 2015 the Department arranged for visits between Rosie and Angel twice a week for two hours at a time. The visits took place at the Department’s offices and were monitored either by a Department social worker or Christina.⁴ The monitor reported the visits were generally appropriate. Rosie would bring Angel toys and buy him food. She was very affectionate with Angel, and he appeared receptive to the affection. On one occasion the social worker observed Rosie sleeping during a visit while Angel played on a tablet.

On February 6, 2015 Rosie refused to have her visit in the visitation room because her friend was in the lobby and wanted to see Angel. At some point during the visit Rosie and Christina had a verbal altercation. After the visit Rosie approached Christina’s car while Christina was attempting to leave the parking lot. Rosie opened the backseat passenger door where Angel was sitting and yelled obscenities at Christina, telling her, “I will kill you bitch.” As a result of this incident, on February 11, 2015 Christina filed a request for a restraining

⁴ No modification of the October 3, 2014 order prohibiting Christina from acting as the monitor is included in the record on appeal.

order against Rosie, which was granted on March 4, 2015.⁵ Due to the incident and the subsequent restraining order, visits between Rosie and Angel ceased from February 10 until after the six-month review hearing.

In a March 31, 2015 status review report the Department stated Angel was doing well mentally and emotionally. He told the social worker he enjoyed living with Christina but missed his mother. Angel had attended 12 therapy sessions as of March 27, 2015. His therapist reported Angel was initially anxious and irritable but had made progress in decreasing these behaviors. The therapist stated Angel was affectionate with Christina and the two appeared to have a good relationship. Angel had expressed he greatly missed Valerie. The Department reported Christina was actively involved in Angel's school activities and therapy and she had enrolled him in swimming and piano lessons.

The Department recommended an additional six months of family reunification services be provided.

At the six-month review hearing on April 3, 2015 the court found by a preponderance of evidence return of Angel to Rosie's custody would create a substantial risk of harm. The court ordered the Department to continue to provide reunification services to Rosie.

4. The 12-month Review Hearing and Rosie's Compliance with Her Case Plan

Rosie was ordered to drug test three times in April and May 2015, after which time her random testing was terminated. Rosie failed to appear for any of the three tests. During a

⁵ The restraining order expires March 4, 2020.

monitored visit with Angel in September 2015, Rosie admitted to the social worker she had used methamphetamine a month earlier. Rosie was asked to submit to an on-demand drug test that day, but she refused.

As of September 21, 2015 Rosie remained homeless. She reported she was living in a trailer with friends but refused to provide an address or location. She continued to refuse assistance in finding shelter care.

Rosie was terminated from the Full Service Program in April 2015. Despite repeatedly being provided with referrals to other programs, Rosie had not enrolled in any services as of September 21, 2015. Rosie told social workers she could not concentrate on obtaining services because she missed Angel and was focused on visiting him. She also expressed frustration that the court had imposed so many requirements on her. Rosie continued to blame Christina for the Department's involvement with her family, telling the social worker Christina was jealous of her and wanted Angel to herself. In addition, Rosie blamed the Department and her previous counselor for extending the case and terminating her from the Full Service Program.

Rosie had 11 monitored visits with Angel between April 2015 and September 2015. The visits occurred less frequently than permitted because the Department often did not have available staff members to monitor the visits. Visits were also infrequent during the summer due to the hours of Angel's day camp. Rosie generally acted appropriately during visits, and she was very affectionate with Angel. However, during one visit in April 2015 the monitor frequently had to redirect the conversation because Rosie attempted to discuss the case and said Christina had "set her up." The monitor reported Angel did

not seem as engaged in the visit and he became upset with Rosie when she spoke too loudly or pressured him to talk. Angel did not appear upset when the visit ended. During other visits the monitor observed Angel appeared more interested in watching videos or playing with his niece than in talking to Rosie. Rosie also had monitored telephone calls with Angel multiple times per week. During a telephone call in July 2015 the monitor observed Rosie speaking in “baby talk” to Angel and repeatedly telling him he would come to live with her soon.

A status review report dated September 21, 2015 stated Angel was doing well mentally and emotionally. He had completed therapy. His therapist reported Angel interacted affectionately and appropriately with Christina, although he often said he missed his sister Valerie. In June 2015 Angel told the Department social worker he wanted to live with Christina but “would not mind” living with his adult sister Desiree. In September 2015 Angel told the social worker, “I kind of want to stay with my aunt Christina, but I want to go with my mom too.”

Christina reported Angel began acting out in April 2015 after he saw Rosie for the first time in two months. However, his behavior had returned to normal after seeing Rosie more consistently. When asked about the possibility of Desiree monitoring future visits, Christina was hesitant. She did not think Desiree would be firm with Rosie and prevent her from discussing the case or acting inappropriately. Christina also said Rosie had threatened to flee to Mexico with Angel.

Due to Rosie’s failure to provide drug tests and her failure to complete court-ordered services, the Department recommended family reunification services be terminated.

In a last minute information for the court, the Department reported Rosie had arrived approximately an hour late for two visits in early September and had spoken to Angel in “baby talk” during one of the visits. During two visits in late September Rosie had “displayed extreme giddy behavior, laughing incessantly outside of the realm one would consider normal for an adult, and speaking to the child in a whiny voice that does not sound appropriate for a parent talking to a child. At the other extreme mother would cry with and tell the child in a whiny voice how much she misses him. Even though mother did not appear to be under the influence at the time of the visit, her behavior was extreme and erratic. It was reported that the child responds to mother lovingly and is mostly receptive to her affection. It was observed the interaction between the two does not appear to be a parent/child relationship and that mother has inappropriate boundaries when interacting with the child.”

The 12-month review hearing scheduled for October 2, 2015 was set for contest and continued to December 17, 2015. At the October 2 hearing the juvenile court ordered the Department to facilitate sibling visitation as frequently as possible.

In a last minute information filed October 26, 2015 the Department reported that, as of October 13, 2015, Rosie had enrolled in an outpatient drug program with Southern California Alcohol & Drug Programs, Inc. (SCADP). In the two weeks since enrolling in the program, Rosie had already missed two classes and had tested positive for methamphetamine on October 15 and October 22, 2015. A visitation schedule had been set in early October, pursuant to which Rosie had monitored visits with Angel once a week for three hours. Rosie was also permitted to speak to Angel on the telephone every evening for half an hour.

The Department continued to recommend the termination of family reunification services.

The contested 12-month review hearing was held on December 17, 2015. The court found by a preponderance of evidence Rosie was in partial compliance with her case plan and extended family reunification services until the 18-month review hearing.

5. The 18-month Review Hearing and Initial Termination of Family Reunification Services

As of February 2, 2016 Rosie remained enrolled in the SCADP outpatient drug program. She had attended 27 educational groups, including sessions regarding substance use, parenting, domestic violence and life skills. She also met weekly with a counselor and submitted to weekly drug testing. Rosie had 14 negative drug tests between late October 2015 and early February 2016. In early February Rosie's counselor informed the Department Rosie "appears to have gain[ed] a greater understanding regarding her addiction and appears committed to her recovery." However, Rosie was terminated from the SCADP program on February 18, 2016 due to noncompliance with the program rules. After her termination from the program Rosie agreed to drug test through the Department, but she failed to appear for two tests in late February and early March 2016.

On March 11, 2016 Rosie enrolled in a program with the Southern California Health & Rehabilitation Program (SCHARP), which provided shelter and services to address mental health issues and substance abuse. Rosie was prescribed medication to treat her bipolar disorder, but as of March 18, 2016 she had not taken the medication.

Between December 2015 and March 2016 Rosie had monitored visitation with Angel at the Department's offices once a week for three hours. She also had monitored telephone calls with Angel five nights a week. The Department reported Rosie's excitement at the visits "can be borderline inappropriate. Mother is loud and boisterous." Rosie often had disputes with Department staff regarding which room to use for visits. During visits Rosie spoke to Angel in "a child like manner" and occasionally spoke negatively about Christina. Beginning March 20, 2016 Desiree was authorized to monitor Rosie's visits with Angel. The visits took place every Sunday for four hours. Valerie and Desiree's daughter also attended the visits. Angel appeared to enjoy the visits with his family and the telephone calls with Rosie.

While the Department acknowledged Rosie had made some progress on her case plan, it continued to recommend termination of family reunification services.

The 18-month review hearing originally scheduled for February 17, 2016 was set for a contest and continued to April 11, 2016. At the hearing the juvenile court found by a preponderance of evidence Rosie was in partial compliance with her case plan but had not made significant progress in resolving the problems that led to Angel's removal. The court terminated reunification services and set a section 366.26 selection and implementation hearing for August 8, 2016.

6. Rosie's Section 388 Petition for Modification and Reinstatement of Family Reunification Services

On August 8, 2016 Rosie filed a section 388 petition requesting the court reinstate reunification services and allow unmonitored visitation. The juvenile court set the petition for

hearing on August 31, 2016 and continued the selection and implementation hearing to that date.

In the months leading up to the hearing Rosie had monitored visits with Angel every Sunday for four hours. The visits were monitored by Desiree and were reported to have gone extremely well. Angel enjoyed spending time with Rosie, his sisters and their children. Similarly, Rosie's nightly telephone calls with Angel went well. The Department reported the conversations "are always of great quality" and Rosie's "ability to connect with her son over the phone and the strong bond that she and her child share is rare."

Rosie continued to be enrolled in the SCHARP program and was pursuing affordable housing with the assistance of the program. However, Rosie had not provided the Department with any record of random drug testing, nor had she participated in the Department's drug testing program.

In July 2016 the Department recommended Angel be adopted by Christina, stating their relationship appears "strong, healthy and loving." However, on August 31, 2016 the Department consented to reinstatement of family reunification services, stating "adoption at this time would be detrimental to the extremely close bond that the child Angel has with [Rosie] and his adult siblings."

The section 388 hearing was held on August 31, 2016. The juvenile court granted the petition in part and took the selection and implementation hearing off calendar. The court ordered the continuance of family reunification services for six months. The court-ordered case plan required Rosie to enroll in a substance abuse program and to submit to random or on-demand drug testing every other week. Rosie was also required to participate

in individual counseling. Monitored visitation was ordered for a minimum of eight hours per week.

7. Additional Review Hearings and the Second Termination of Family Reunification Services

In a status review report dated September 9, 2016 the Department stated Rosie continued to participate in the SCHARP program. Rosie's weekly monitored visits with Angel and their nightly telephone calls were still going extremely well. Angel was excited about the extended Sunday visits because the family was able to do more things, such as go to the beach.

The report stated Christina provided Angel with a safe, loving, caring and stable environment. Angel reported feeling happy and safe in Christina's home, but said he is not sure he can tell Christina everything. Angel expressed a preference for returning to live with his mother.

After the juvenile court reinstated family reunification services, Christina indicated she could no longer care for Angel because she believed the Department was not properly protecting him from Rosie's "dysfunctional environment." Following a discussion with the social worker, Christina reconsidered and agreed to continue fostering Angel.

The Department concluded Rosie and Christina "will not be mending their relationship anytime soon" and expressed concern "regarding the commitment of [Christina] in helping with [family reunification] services." The Department recommended continued family reunification services for Rosie.

A status review hearing was held on October 12, 2016. The court ordered continued family reunification services with monitored visitation of six hours minimum every Sunday. The

court ordered the Department to allow unmonitored visitation once Rosie had completed three consecutive negative drug tests.

Between September 2016 and April 2017 Rosie tested negative on six nonconsecutive drug tests and failed to appear for 11 tests. Rosie stated she missed tests because she was travelling, babysitting her grandchildren and helping her daughter move and because it was hard for her to remember to call every day.

Rosie continued to receive services through SCHARP, where she regularly attended parenting and substance abuse classes as well as psychotherapy sessions. Rosie had been approved for rental assistance through the section 8 housing program and expected to have housing by the end of 2017. Her case manager told the Department she was fully engaged in her programs.

Because Rosie failed to have three consecutive negative drug tests, her visitation remained monitored. She was consistent in her visits and nightly telephone calls. The Department reported it “continues to observe an extremely strong relationship between mother and son and hears the love that the two share for each other.” Angel communicated feeling safe in Christina’s home and having a good relationship with her. Nevertheless, he continued to express a preference for returning to Rosie’s care.

In making a recommendation the Department recognized there were factors supporting the continuation of services—Rosie had recently made progress on her case plan, and she had a strong bond with Angel. The Department also expressed concern Christina would sever that bond and cut off contact with the family if she were able to adopt Angel. Nonetheless, the

Department recommended terminating family reunification services. The Department explained it had been more than two years since Angel had been removed and Rosie still “has not been able to address the main concern of the Department which includes staying clean and sober and proving so by participating in random drug testing.” The Department believed Angel deserved stability in his placement, which could be achieved only by terminating services.

A contested status review hearing was held on April 27, 2017. Rosie’s counsel requested additional family reunification services be provided. He acknowledged Rosie’s drug testing had been inconsistent and she continued to lack proper housing. However, he argued Rosie was doing well in the SCHARP program and her visits with Angel had been consistent and positive. He requested additional time for Rosie to prove she could test consistently and secure housing.

Angel’s counsel opposed the request for additional services. She stated Rosie’s visits disrupted Angel’s stability in his placement and caused him to believe he would be reunified with Rosie immediately. She also stated Desiree allowed Rosie to discuss the case with Angel, which caused him to have “false hopes that are not based in reality.” Angel then “emotionally breaks down” when he is not immediately returned to Rosie’s care. Angel’s counsel argued Rosie had already been given over two and one-half years to prove she could test consistently and secure housing, but had failed to do so. She insisted it was not in Angel’s best interest to “make him continue to wait for a permanent home while mom has chance after chance after chance to get her act together.”

The juvenile court terminated reunification services and set a section 366.26 selection and implementation hearing for August 24, 2017. The court also ordered that Desiree was no longer permitted to monitor visits. The court ordered the Department to investigate Rosie's conduct during visits and ordered the parties to appear for a status hearing on June 1, 2017.

8. *The 2017 Status Hearings and the Selection and Implementation Hearing*

On June 1, 2017 the Department filed a last minute information reporting on interviews with the family regarding Rosie's conduct during visits with Angel. Desiree told the social worker the dependency case was discussed during Rosie's visits with Angel only when the child asked questions or reported a concern. Desiree and Rosie would ask follow-up questions and encourage Angel to raise any questions or concerns with the social worker. Desiree said she would not allow Rosie to discuss the case with Angel.

Rosie confirmed that she understood she was not supposed to discuss the case with Angel. She said she only asked follow-up questions when Angel complained about Christina's boyfriend. She explained she wanted her son to raise any concerns he had, and she encouraged him to ask questions of the social worker.

Christina reported Angel returned from his visits with Rosie asking questions about the case. She expressed concern Angel's visits with his "chaotic" family were detrimental to his well-being. When asked if she would allow Angel to maintain a relationship with his mother and sisters if she were to adopt him, Christina said she "does not feel like she is able to deal with her sister . . . or nieces" because there is "too much tension." The

social worker observed that, even though Christina had provided Angel with “love, nurture and stability, the caregiver’s inability to see the value of the strong relationship between her nephew and his mother is detrimental to the youth’s overall well-being.”

Angel told the social worker his mother asked him questions about Christina’s boyfriend and whether he felt safe in Christina’s home. He said when Rosie asked too many questions, Desiree would redirect the conversation. Angel said he wanted the visits to go back to the way they had been when Desiree was the monitor and he missed his mother and sisters.

During the status hearing held on June 1, 2017, Angel’s counsel stated the account of Rosie’s behavior during visits contained in the last minute information was contrary to what Angel had told her. She said Angel had always reported Rosie asked about Christina during visits and told him he was going to live with Rosie or his sisters. Rosie and Christina addressed the court during the hearing, and the court expressed frustration that neither adult appeared to be acting in the best interest of the child. The court ordered visits and telephone calls to continue to be monitored by Department personnel pending the selection and implementation hearing.

In an interim review report and last minute information prepared for the selection and implementation hearing, the Department reported Rosie continued to receive services through SCHARP. She had secured permanent housing and would be moving in on September 1, 2017. Between late April 2017 and August 2017 Rosie had seven negative drug tests and one no-show. Rosie continued to visit Angel for three hours every Sunday with an independent monitor. Angel told the Department he is “ok” staying with Christina but would prefer to

return to Rosie. Christina said she was committed to providing Angel a permanent home through adoption. Christina's home had been approved for adoption, and the Department recommended termination of parental rights.

The parties appeared for the selection and implementation hearing on August 24, 2017 at which time Rosie requested a contested hearing. Angel's counsel informed the court Rosie continued to discuss the case with Angel and Angel had arrived at the courthouse that day believing he would be going home with Rosie because she had secured housing. When Angel was told that was not the case, he had a "breakdown" and had to leave the building. Angel's counsel requested additional counseling be ordered for Angel. The court ordered visits would continue to be monitored by the Department and admonished Rosie not to discuss the case with Angel. The matter was continued for a contested hearing.

In an October 24, 2017 report the Department informed the court Rosie continued to visit with Angel approximately once a week for two hours at the Department's offices. Angel was happy during the visits. He also reported being happy living with Christina. The Department recommended termination of parental rights.

The contested selection and implementation hearing occurred on October 26, December 1 and December 4, 2017. Rosie testified she had visited Angel consistently and had spoken to him on the telephone every weeknight. She said she brings coloring books and educational puzzles to their visits and she was teaching Angel Spanish. On cross-examination Rosie admitted she did not know the name of Angel's school, his teacher's or

doctor's names or whether he takes any medication. She said she had asked for this information, but it had not been provided.

Angel's eldest sister Amber testified she was very close to Angel. She said she never missed a Sunday visit during the time Desiree was monitoring them. She and Angel would talk during these visits, and Angel spent a lot of time playing with Amber's daughter because the children were close in age. Amber said she had repeatedly tried to contact Angel through Christina, but Christina never responded. Desiree likewise testified she was very close to Angel and had lived with him for the first four years of his life. She said she helped Rosie take care of him and felt like he was her son. She had also tried to reach Angel through Christina but received no response. She stated she had not made an attempt to mend her relationship with Christina.

The Department argued in favor of adoption as Angel's permanent plan, stating he was adoptable and Christina's home study had been approved. Angel's counsel also argued in favor of adoption. She stated Angel did have a bond with Rosie, but Rosie did not occupy a parental role in Angel's life. She argued Rosie had never tested consistently and had her visitation restricted over time rather than liberalized. She further noted the prolonged nature of this case had led to the resumption of Angel's counseling.

The juvenile court found Rosie "has maintained regular visitation and contact but it's not always appropriate and in the best interest of the child. And I do not believe the child would benefit from the continuing relationship while mother figures out how to be an appropriate parent and follow court orders."⁶ The

⁶ The minute order for the December 4, 2017 hearing states the court found Rosie had not maintained regular visitation.

court observed the case had been pending for more than three years, but Rosie continued to discuss inappropriate topics with Angel and did not occupy a parental role in his life. For these reasons the court found the section 366.36 parental bond exception did not apply. Likewise the court found the sibling bond exception did not apply, although the court stated it was a “closer call.” The court terminated Rosie’s parental rights and transferred the care, custody and control of Angel to the Department to complete his adoption by Christina.

DISCUSSION

1. *The Juvenile Court Did Not Err in Ruling Rosie Had Failed To Establish the Parent-child-relationship Exception to Termination of Parental Rights*

a. *Governing law and standard of review*

The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) Once the court has decided to end parent-child reunification services, the legislative preference is for adoption. (§ 366.26, subd. (b)(1); *In re S.B.* (2009) 46 Cal.4th 529, 532 “[i]f adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child”]; *In re Celine R.* (2003) 31 Cal.4th 45, 53 “[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and

Where there is a discrepancy between the oral pronouncement and the clerk-prepared minute order, the oral pronouncement is controlling. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.)

its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child”]; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [once reunification efforts have been found unsuccessful, the state has a “compelling” interest in “providing stable, permanent homes for children who have been removed from parental custody,” and the court then must “concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order”]; see also *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299-1300; *In re G.B.* (2014) 227 Cal.App.4th 1147, 1163.)

Section 366.26 requires the juvenile court to conduct a two-part inquiry at the selection and implementation hearing. First, it determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time.

(*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250; *In re D.M.* (2012) 205 Cal.App.4th 283, 290.) Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of the enumerated statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B); see *Cynthia D.*, at pp. 250, 259 [when child is adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is relatively automatic].)

One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if “[t]he parents have maintained regular visitation and contact with the child and the

child would benefit from continuing the relationship.” The exception requires the parent to prove he or she has maintained regular visitation and his or her relationship with the child “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 re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 “[t]he 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”].)

A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 “[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”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy “a parental role” in the child’s life.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) Factors to consider include ““[t]he 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.”” (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 643.) Moreover “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the

parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The parent has the burden of proving the statutory exception applies. (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646; *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1527; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) Once a court has found regular visitation occurred, the court's decision a parent has not satisfied his or her burden may be based on either or both of two component determinations—whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re Breanna S.*, at p. 647; *In re I.W.*, at pp. 1527-1528.) When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*In re K.P.*, at pp. 621-622; *In re Bailey J.*, at pp. 1314-1315.)

b. *Rosie failed to establish the (c)(1)(B)(i) exception to termination of parental rights*

Rosie contends she established the existence of a beneficial parental relationship with Angel within the meaning of

section 366.26, subdivision (c)(1)(B)(i), because she maintained regular visitation, Angel was happy to see her during visits and he said he wanted to live with her. Rosie further relies on the Department's characterization of her relationship with Angel as extremely close and rare.⁷ However, the record does not compel a finding Rosie maintained a parent-child relationship with Angel. While Rosie's visits and telephone calls were consistent, she never progressed to unmonitored visitation during the three years the case was pending. Further, the fact Angel was happy to see Rosie during visits and wanted to live with her does not compel a finding a parental relationship existed absent some other evidence of a "significant, positive, emotional attachment from child to parent." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396; see also *In re K.P.*, *supra*, 203 Cal.App.4th at p. 621 ["loving and frequent contact" and an "emotional bond" not per se sufficient to establish parental relationship].) Nothing in the record provides such evidence. To the contrary, Rosie repeatedly acted inappropriately during visits, exhibiting erratic, confrontational behavior and discussing inappropriate subjects with Angel. There is no doubt Angel enjoyed his visits and telephone calls with Rosie during which they played games and went on family outings, but there is no evidence Angel looked to Rosie for emotional support or guidance. (See *In re C.F.* (2011) 193 Cal.App.4th 549, 557 [mother did not occupy parental role where no evidence she met children's emotional and physical needs]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [parents did not occupy parental role where aunt was "comforting

⁷ Rosie does not dispute the juvenile court's finding Angel was likely to be adopted.

and nurturing [children] by providing their day-to-day care”]; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576 [no parental bond where relationship was one of friendship, not parent-child].)

Even if Rosie could establish a parental bond, however, the juvenile court’s determination the benefit to Angel from continuing the relationship with her did not outweigh the well-being he would gain from adoption by Christina was well within its discretion. (See *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 648; *In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Rosie does not deny Angel has a good relationship with Christina and is thriving in her home. Instead, Rosie emphasizes her bond with Angel and argues Christina will sever this bond if she were to gain legal custody of Angel. This argument is not a relevant consideration at this stage of the proceeding—every case in which adoption is identified as the permanent plan necessarily carries with it a risk the child will discontinue contact with his or her birth parents. Such is the nature of adoption. Once the parental bond is established, the relevant inquiry is not whether the child would derive some benefit if the relationship were maintained, but whether maintaining that relationship outweighs the well-being the child would gain in a permanent home. (§ 366.26, subd. (c)(1)(B)(i); *In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 396; *In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.) Rosie has not presented evidence the relationship conferred benefits to Angel more significant than the permanency and stability offered by adoption.

To the contrary, the evidence presented to the juvenile court demonstrated continued uncertainty was detrimental to Angel. Rosie persisted in discussing the case with Angel, even

after being repeatedly admonished not to do so. As a result, Angel had multiple emotional outbursts and was required to return to therapy. In addition, during the more than three years the case was pending, Rosie was terminated from two counseling programs, had two positive drug tests and admitted to using methamphetamine on a third occasion. While she had 27 negative drug tests in those three years, she failed to appear for an additional 24 tests. Even after having her services reinstated, Rosie missed 11 of the 17 tests ordered before services were again terminated. Further, Rosie was unable to achieve three consecutive negative tests, despite being told she could earn unmonitored visitation by doing so. Not only did visitation remain monitored throughout the case, but visitation also often occurred only once per week. While this was in part due to the Department's inability to schedule independent monitors more frequently, it was Rosie's behavior that caused the necessity for independent monitors in the first place. This record established that, despite having three years to address the issues that caused Angel's removal, Rosie is still in the early stages of dealing with her substance abuse.

In contrast, Angel's placement with Christina has been a stable and positive influence. Angel is bonded with Christina, and she takes an active role in his development and activities. In sum, the juvenile court did not abuse its discretion when it concluded the benefit of the relationship Angel had with his mother did not outweigh the benefit to Angel that would come from adoption. (See *In re Noah G.*, *supra*, 247 Cal.App.4th at pp. 1301-1302 [beneficial parental relationship did not outweigh permanency when mother did not follow up on case plan, failed to comply with court orders, missed drug tests, tested positive

during case and had only monitored visitation]; *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 [positive aspects of parents' visits did not outweigh benefit of permanency when parents inappropriately talked about case and other adult matters and children had behavioral issues after visits].)

2. *The Juvenile Court Did Not Err in Ruling Rosie Had Failed To Establish the Sibling Relationship Exception to Termination of Parental Rights*

a. *Governing law and standard of review*

The purpose of the sibling exception is to preserve longstanding sibling relationships that serve as “anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404; accord, *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 781.) “To show a substantial interference with a sibling relationship the parent [or sibling granted standing] must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.) The court should consider “the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child’s best interest in continuing that sibling

relationship against the benefit the child would receive by the permanency of adoption.” (*Ibid.*; accord, *In re Celine R.*, *supra*, 31 Cal.4th at p. 61.) “[T]he concern is the best interests of the child being considered for adoption, not the interests of that child’s siblings.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822; see *Celine R.*, at pp. 49-50.) “The court must balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer.” (*In re L.Y.L.*, at p. 951; accord, *In re Elizabeth M.*, at p. 781; *In re D.M.*, *supra*, 205 Cal.App.4th at p. 293.)

As with the exception for a parent-child relationship, the parent has the burden of proving the statutory exception for sibling relationships applies. (*In re Elizabeth M.*, *supra*, 19 Cal.App.5th at p. 781; *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) The court’s decision a parent has not carried this burden may be based on either or both of two component determinations—whether a beneficial sibling relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child” (§ 366.26, subd. (c)(1)(B); see *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.*, at p. 1314.) When the juvenile court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re Breanna S.*, at p. 647; *In re I.W.*, *supra*, 180 Cal.App.4th at pp. 1527-1528.) When the juvenile court concludes the benefit to the child derived

from preserving the sibling relationship is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080; see *In re K.P.*, at pp. 621-622; *In re Bailey J.*, at pp. 1314-1315.)

b. *Rosie failed to establish the (c)(1)(B)(v) exception to termination of parental rights*

The record before the juvenile court does not compel a finding Angel had a significant sibling relationship with his sisters. There is no evidence Angel ever lived in the same home as Amber, and he lived with Desiree only until he was four years old, less than half his life. Angel told the Department social workers he missed his sisters and enjoyed spending time with them during visits. Likewise, Desiree and Amber testified they had great affection for Angel. However, there was no evidence describing the nature and quality of their relationships or identifying any significant common experiences. Nor was there evidence of Angel's perception of the relationship other than general statements of affection. (See *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1318 [no significant sibling relationship when minor's "contact with [sister] was limited to her presence at some of the mother's weekly visits over a period of less than eight months. Although it is clear that [sister] treasured [minor], the evidence did not establish that [minor's] attachment to [sister] was equally strong"].)

Even if a significant sibling relationship existed, the finding the benefits of the relationship did not outweigh the benefits of permanency was well within the juvenile court's discretion. As discussed, Angel was thriving in Christina's home and had difficulty coping with the uncertainty of the ongoing

case. The juvenile court was fully justified in finding the sense of security and belonging that adoption would bring outweighed the benefit of the sibling relationship. (See *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014 [application of the sibling relationship exception to termination of parental rights “will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount”].)

DISPOSITION

The December 4, 2017 order of the juvenile court terminating parental rights is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.