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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JUAN L., a Person Coming Under the
Juvenile Court Law.

B238227
(Los Angeles County
Super. Ct. No. CK51843)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CAROLINE L. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Valerie Lynn Skeba, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendants and Appellants.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach for Plaintiff and Respondent.

Lori Siegel, under appointment by the Court of Appeal, for Juan L.

I. INTRODUCTION

The juvenile court terminated parental rights to Juan L. pursuant to Welfare and Institutions Code¹ section 366.26 almost nine years after he was declared a dependent pursuant to section 300. Neither parent has appealed from the parental rights termination order. Rather, the appeal was filed by four of his older siblings, who are currently aged as follows: Caroline L. (20); Samuel L. (17); Michelle (16); and Nicole (15). The older siblings contend the juvenile court was obligated as a matter of law to apply the sibling relationship exception to termination of parental rights pursuant to section 366.26, subdivision (c)(1)(B)(v). This contention is meritless and we affirm the order terminating parental rights.

II. Factual and Procedural Background

Because neither parent has appealed the parental termination order, they are mentioned only as it is relevant to the siblings' claim that parental rights should not have been terminated. In April 2003, the Los Angeles County Department of Children and Family Services ("the department") filed a section 300 petition on behalf of Juan and his five older siblings. At the time the petition was filed, the 6 children were aged as follows: Caroline (11); Jennifer (9); Samuel (8); Michelle (7); Nicole (6); and Juan (2). The petition alleged that Mario O. is the mother of all the children. Juan L.'s father is Juan L., Sr., who is not the father of the older children.

The petition alleged that the children were exposed to violent altercations between the mother and Juan's father. In a March 27, 2003 altercation, Juan Sr., struck the mother with a plastic pipe on her face, back and arm. He also pulled the mother's hair, attempted to choke her with his hands, and threatened to kill her. At the time the petition was filed, Juan Sr., was incarcerated because of this conduct. In addition to the exposure to violent

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

altercations, the children were alleged to be at risk from the mother being “under the influence” on occasion. The mother also was alleged to have created a detrimental environment by: failing to ensure the children regularly and promptly attended school; and failing to pick the children up from school in a timely manner.

In the April 11, 2003 detention report, the department indicated that the six children had been placed together. Prior to the children’s detention, the mother and children had been living in motel rooms for the past four months. A homeless program through the children’s school district had attempted to assist the family with food, shelter, referrals, counseling and transportation. The mother was offered a referral to a domestic violence shelter. She was resistant and uninterested in receiving assistance. The mother was often late picking up her children from school. The teachers would have to wait up to 6:00 p.m. before she would arrive. When interviewed on March 27, 2003, the mother refused an offer for voluntary services. The mother stated she did not want the department “bothering” her and telling her what to do. The detention report also documents incidents when the mother’s eyes were glassy and red. The mother appeared to be incoherent at times when picking up and dropping off her children at school. During an unannounced visit to the hotel on April 8, 2008 the mother appeared to be under the influence of drugs, alcohol or both. The children were detained after the mother refused any services and requests to cooperate with department social workers.

At the detention hearing on April 11, 2003, the juvenile court found a prima facie case for detaining the children had been established. At the hearing, Juan Sr., was found to be Juan’s presumed father. Mike R. was found to be Michelle’s alleged father. And, Samuel L. was found to be the presumed father of the other children. The parents were given monitored visits.

In an April 25, 2003 interim review report, the department reported that efforts had been made to place the children in the same home with their godmother, Maria T. However, Maria T. could not take all six children into her home. She believed the children should remain together. On July 7, 2003, the juvenile court sustained the

petition as amended. The parents were given family reunification services and monitored visits.

In a December 11, 2003 status review report, the department reported the children were all living with the same foster family. The children had adjusted well to the environment. They had supervision, security, medical care and attention from the foster parents. The mother had not been able to find stable employment. Juan, Sr., was incarcerated for domestic violence and awaiting deportation. The children visited with their mother where they received gifts and ate hamburgers. Two-year-old Juan cried when the visit was over with the mother. At the six-month review hearing, on December 11, 2003, the juvenile court continued the out-of-home placement.

During the 12-month review period, the children all remained placed in the same foster home. The foster home provided a consistent, loving and caring environment for the children. The older children wanted to return to the mother. They were upset about the possibility of not being returned to her. The older children were very protective of the mother. Caroline was acting in a parenting role with her younger siblings. The older three children resisted parental authority. When the younger children showed affection towards their foster parents, they were chastised by Caroline.

The mother continued to have an unstable lifestyle. She lived in motels or with friends and was not consistently employed. The mother tested positive for methamphetamines on different occasions. On one such occasion, she tested positive in May 2004 after giving birth to a stillborn child. Juan Sr., had been deported to Mexico. On November 5, 2004, the juvenile court found the parents were not in compliance with the case plan. The juvenile court then terminated reunification services and ordered the children into long-term foster care.

In November 2004, the children were all still placed in the same foster home. They remained placed together in this foster home until September 7, 2006. The mother gave birth to her eighth child in March 2005. The baby died a month later from respiratory complications. The mother visited the children inconsistently. Juan was thriving in the foster home.

On November 3, 2006, the department reported the mother's ongoing contact with the children was detrimental to them. According to the foster mother, the children said that the mother told them not to listen to anyone. Samuel's behavior at school resulted in several suspensions and expulsion. The mother continued to have an unstable and unhealthy lifestyle. The mother threatened the foster parents on several occasions. The mother said that, if the foster parents did not obey her orders, they would pay the price. The mother would argue with the foster parents saying she is "the law" and the children are hers. She also placed telephone calls to the foster parents' home at 2:00 a.m. threatening to kill them. The foster parents saved some of the messages. The mother's negative behavior and comments caused the children to become defiant in the placement and at school. In September 2006, the children were removed from the foster home because they refused to follow the foster parents' and school's rules. Samuel disrupted his classes, vandalized school property and was violent toward his peers. Samuel was suspended from school on more than one occasion.

As previously noted, the six children had been living in the foster home since April 2003 when they were detained. The children were placed in three separate foster homes because the department was unable to place all six of them together in a home. The social worker thought the behavioral problems of the older children influenced their younger siblings.

The department's April 27, 2007 post permanent plan status review report noted that Samuel had been placed with his older siblings in the same foster home. Samuel had been expelled from school for physically assaulting a teacher. The placement for Michelle, Nicole and Juan was changed because the foster mother left the agency. Michelle helped Juan practice words and read to him. The social worker, Maria Casas-Martinez, wrote, "Nicole was reported to be acting out at the new placement and verbalized she missed her previous foster mother." In August 2007, Michelle, Nicole and Juan vacationed together in Mexico with their foster family. The two sibling groups had twice monthly visits. They had weekly telephone contact. Juan appeared to look forward

to visits with the mother and his older siblings, especially Samuel. Juan looked to Caroline for guidance.

In November 2007, the department reported that then 16-year-old Caroline had been staying out all night in contravention with the foster mother's instructions. Jennifer, who was 14 at the time, was suspended from school for drinking. The foster mother agreed to give the children another opportunity to live by her rules. She also indicated that she would like to take the younger children into her home at some point. The department reported that such a placement was infeasible because there was no space in the home. In addition, the older children's behavior would not benefit their younger siblings who were doing wonderfully in their stable placement. The foster mothers were very good at coordinating activities which allowed the siblings to spend time together.

During that period of supervision, the mother had visited the children. After one visit in May 2007, the mother purposely drove a car into the same lane as the foster mother's car. The foster mother observed the mother to be laughing. The foster mother felt threatened and feared for the children's safety. In July 2007, the mother arrived for a visit which she had not confirmed. Because the mother had not confirmed the visit, the children were not present. The foster mother agreed to bring the children for the visit. When they arrived, there was no Spanish speaking monitor available. When the mother was instructed to speak in English she became upset and refused the request. The mother became more aggressive, upsetting the children. Eventually, the police had to be called. The department was warned that if the mother's behavior continued the agency would not be able to monitor the visits.

In March 2008, Samuel attended a party but then refused to get in the car when his foster parents arrived to take him home. Samuel, who was then 13 years old, disappeared. After a protective custody warrant was issued for him on April 9, 2008, Samuel reappeared on April 10, 2008. Samuel had a new tattoo on his neck with his mother's name.

In May 2008, the department reported that Michelle, Nicole and Juan remained in the same foster home. The younger children were doing well in school. Michelle got

excellent marks and was in advanced classes. However, Nicole was having some behavior issues including some gang involvement. Nicole and Juan also did well in school. Jennifer was still in the same foster home. Samuel was in a different foster home. He had behavior issues and did not interact well with his peers. Caroline was missing and had a protective custody warrant issued for her in December 2007. Prior to her disappearance, she was failing most of her high school classes due to truancy. During this period of time, the mother's visits were sporadic. She visited the children in February 2008 and gave them Christmas presents. The three younger children visited with their godmother, who only wanted a day visit. She indicated that the older children were too much trouble and that they would take off to find their mother.

By October 30, 2008, only Caroline and Jennifer were placed in the same foster home. The children had monthly visits with each other. They were happy to see one another. They also visited overnight with each other. They took photographs and e-mailed each other. They had sleepovers at each other's foster parents' homes. They also celebrated birthdays together. Nicole and Juan saw each other more frequently because their respective foster families were related. However, Juan disclosed that Nicole was encouraging him to join a gang. On October 30, 2008 at the review hearing, Michelle, Samuel and Juan asked to be placed together in the same home. The juvenile court ordered twice monthly visits and best efforts to place the three siblings together.

In April 2009, the department reported Juan and Michelle were placed together in the same foster home. This is where Juan is currently placed with the prospective adoptive family. Although Michelle was doing well academically, she was getting in trouble at school. Juan was doing well at his school and had received a "Monthly Teacher Award." Juan was in individual counseling to address separation issues from his biological family and abandonment issues by his parents. He also needed to address self-awareness and social skills. However, Juan was improving in school and liked his new placement. Because of his great behavior and efforts at school, the foster mother bought him a bicycle. The foster family vacationed with Juan and Michelle in Mexico in June 2009.

Samuel preferred to stay in a group home. Esther Waldo, the social worker, reported, “It didn’t matter to Samuel that he would be residing with . . . Michelle or Juan.” He liked his school and placement and refused to move. Samuel did well academically but was suspended several times at school. Caroline and Jennifer were placed in the same home. Nicole did not want to be replaced with her older sisters. Nicole was doing well in her placement. Caroline was having difficulty keeping curfews.

The children had sibling visits on a regular basis. The foster mothers took turns arranging the visits at the homes, parks or mall. They sometimes arranged extra visits such as spending the night and celebrating holidays and birthdays. The siblings were affectionate with one another, greeting each other with hugs and kisses. They were happy to see each and would talk or play together. Juan asked for more sibling visits. None of the children wanted to be adopted at that time.

In October 2009, the department reported all the siblings were placed in six different homes. Michelle asked to be replaced because Juan’s prospective adoptive parents wanted to adopt him. Michelle did not agree with adoption for Juan. Michelle was asked if she wanted her younger brother to be placed in one foster home after another until he was 18.

Michael Naples was Juan’s therapist. Mr. Naples reported Juan was distrustful and tended to keep an emotional distance. But, he was generally friendly and positive during sessions. Juan appeared to guard himself from disappointments such as people going away and leaving him. Juan could open up and be communicative when he wanted. Michelle’s moving out would be good for Juan so that he could make up his own mind. Juan would always be connected to all his siblings who are willing to connect with him. He looked forward to visiting and enjoyed spending time with them. Juan had adapted well to his placement. Mr. Naples thought that adoption or legal guardianship in Juan’s current placement was appropriate.

Samuel liked his placement at the group home. He continued to do well academically but was suspended several times from school for his behavior. Within a three-month period, Samuel received citations for public intoxication, loitering, petty

theft and being under the influence of a controlled substance. In June 2009, the juvenile court issued a protective custody warrant for Caroline, who was absent without leave from her placement. Caroline was absent without leave from several placements between June 3, 2009 and July 2009. Caroline was asked to leave a previous placement with Jennifer. This was because Caroline refused to comply with curfew requirements. Caroline also did not respect the foster mother's rules. She was also at risk of losing her current placement because she refused to keep school appointments to address her academic issues.

Nicole was replaced at her own request. She was having problems with a new foster adolescent with whom she shared a room. Nicole bragged about knowing gang members and having people work for her selling drugs. Nicole's foster parents found a sandwich bag filled with what looked like marijuana. Although Nicole denied that it was drugs, she always had money and cell phones. Older people would drive up in nice cars and give Nicole money. After Nicole was replaced, she used a classmate's cell phone to make calls. Nicole also had an "attitude" and called the foster mother a name. The children were having sibling visits on a monthly basis. Nicole rarely participated in the visits.

Juan and Michelle had vacationed with Juan's foster parents at Big Bear. Juan was going to spend Christmas with his prospective adoptive parents in Costa Rica. The prospective adoptive father and Juan had a good rapport. The prospective adoptive father, Daniel A., took Juan to soccer practice and games. Juan had improved his grades. He wanted to permanently reside with the potential adoptive parents. Juan did not want to be moved to a different foster home. He wanted the prospective adoptive parents to be his "[m]ommy and daddy." Juan was assessed for and found to be adoptable. The prospective adoptive parents were committed to adopting Juan. The department recommended that the juvenile court set a section 366.26 hearing for Juan so that adoption could be pursued as his permanent plan.

Jennifer, Michelle and Juan attended the October 6, 2009 hearing. The department requested the juvenile court set the section 366.26 permanent plan hearing. Counsel for

Jennifer, Michelle and Juan, Tamar Dennis, indicated Juan was only interested in legal guardianship. The juvenile court said: it had concerns about Michelle being replaced over Juan's prospective adoption; it was inappropriate to suggest to Michelle that Juan would bounce from home to home; and the department should consider other plans. Noting Juan's preference at the hearing was legal guardianship, the juvenile court indicated a section 366.26 hearing would be set to consider different plans.

In a November 10, 2009 interim review report, the department stated that Michelle and Jennifer denied offers to be placed with Nicole. Also, Nicole did not want to be replaced. Michelle mentioned that Nicole bragged about gang affiliations. Pictures on MySpace showed Nicole with tattooed adult males, one of whom had a gun on his lap.

On April 1, 2010, the department confirmed that the mother had been deported to El Salvador. The department reported Michelle, Nicole and Juan had twice monthly visits. The older siblings, Caroline, Jennifer and Samuel would often miss the visits, preferring to spend time with each other. The three younger children were disappointed not to see the older siblings during the visits. Juan would look forward to the visits and then was saddened because they were not as excited about seeing him.

Jennifer admitted using marijuana and methamphetamines. Caroline, who was 18, wanted to care for and have custody of her younger brothers and sisters. However, Caroline did not graduate from high school and failed to follow through with efforts to take a General Education Development test. Caroline had problems in keeping her placements because she would not follow the rules. She also appeared to have some mental health issues and admitted using methamphetamine.

Juan was doing well and happy residing with the prospective adoptive parents. He was very involved with soccer activities. His grades improved and he received perfect attendance and student of the month awards. The department noted that Juan had five placements since April 8, 2003. When Juan was told the difference between adoption and legal guardianship, he expressed a preference for legal guardianship. His guardianship preference in April 2010 was apparently because he felt adoption would be a betrayal of his biological family. Because of the juvenile court's October 2009 order

that the department consider alternative plans for Juan, the department recommended legal guardianship for him. The juvenile court set a section 366.26 permanent plan hearing for Juan.

On August 3, 2010, the department submitted a section 366.26 report. The report summarized Juan's placement history since he was detained over seven years earlier. It noted he was never returned to his biological mother's custody. Juan was two at the time he was removed from her custody. Juan had five placements. His initial placement was for two and one-half years, from April 8, 2003 through November 3, 2006. Juan was replaced due to his siblings' behavior. He was replaced at the age of four with two older siblings, Michelle and Nicole. The mother disrupted this placement by making threats to the foster family. The children responded to the mother's conduct making it difficult for the foster parents to care for them. Thus, about six months later, in May 2007, Juan was replaced alone until October 30, 2008. Juan was seven years old at that time. In January, 2009, Juan was replaced with his current foster family, who are now the prospective adoptive parents, so that he could be placed with siblings. Juan was eight years old at that time. Michelle was placed with him but was removed from the home. As of August 2010, Juan had been living in his current placement for two years. Juan was flourishing in the foster home. The older siblings were all living in separate homes. Caroline and Jennifer had drug and absences without leave issues. Samuel had absence without leave and authority issues. Nicole wanted to be fostered as an only child. Michelle was removed from her placement with Juan due to her behavior. The department noted that the siblings had only spent about four of the seven years of dependency living together.

The August 3, 2010 report indicated Juan vacillated over the adoption issue. Juan's therapist thought that Michelle may have influenced the youngster to choose legal guardianship over adoption. On July 26, 2010, Juan made it clear that he wanted the prospective adoptive parents to adopt him. He considered them to be his father and mother. He looked forward to being adopted and having his first and last name changed. Juan stated he wanted to remain in his current home where he wanted to stay forever. He

loved his foster family very much. He considered their extended family to be his family. He was excited about being adopted by the foster family.

Juan stated that he did not see his siblings on a regular basis. When he did see them, they all do not participate in the visits. Only one sibling, Michelle, came to a swimming party for his birthday. She spent the time texting her friends. She was not interacting or engaging in activities with Juan. The siblings had his telephone number. And he had their telephone numbers. But they do not call each other. Juan would like to have a relationship with his biological mother but did not. The mother had chosen not to write to him from El Salvador.

The department stated that, although legal guardianship was the current recommendation, it was not the best permanent plan for Juan. Adoption would create the stability and permanence Juan needed. The foster parents loved Juan and he loved them. And Juan felt loved by them. Juan wrote about vacationing with his foster family at Big Bear. He also wrote a school essay entitled “My Hero.” Juan described how his hero was his “dad,” Daniel A. The department reported that, in contrast to Juan, the older children appeared affected by their attachment to the mother. They had vivid memories of her. This interfered with their ability to bond to their caretakers. However, Juan was younger and better able to bond to his caretakers. There was no emotional connection to her other than knowing she was his mother. The social worker believed Juan was adoptable and needed permanency. The prospective adoptive parents were willing to allow Juan “to have appropriate contact” with his siblings.

On September 28, 2010, the department reported that most of the children were in separate placements. Juan continued to thrive in his foster home. He was happy and doing well in school. He participated in soccer. Juan had developed a healthy and nurturing relationship with his foster family.

As noted, Juan’s therapist was Mr. Naples. Mr. Naples decided to keep providing individual counseling to Juan until the permanent plan was determined. According to Mr. Naples, Juan became confused about the adoption process during a court hearing. Juan was apparently told that his brothers and sisters would no longer be his siblings. He

was also told that he would not have contact with them. Juan stated he wanted to be adopted but only if he would maintain contact with his siblings. Juan loved his siblings and looked forward to seeing them.

Michelle, who was 14 years old, was doing exceedingly well in her placement. She wanted to stay in her foster home until she was emancipated. Samuel was likewise doing well after leaving the group home at his request. He was doing well in school and hoped to graduate early as a junior. Nicole was placed in Samuel's foster home in mid-September 2010. Jennifer got along with a foster mother but refused to follow the rules. Jennifer flunked all her classes the prior semester. She had only attended one class since the current semester began. She was loitering with her boyfriend and friends at malls. She was driving without a license. Jennifer denied using drugs. But, the social worker, Esther Waldo, did not believe Jennifer's denial of drug use. Jennifer seldom attended the sibling visits. Caroline would also not show up as much for the sibling visits. Juan, Michelle, Nicole and Samuel saw a lot of each other. They also would go out with each other and their friends outside of arranged sibling visits. Michelle and Nicole lived close to each other. They sometimes spent the weekend together at Michelle's foster home. Caroline, who was 18 years old, was still in a placement. But, because she refused to attend school, the department had been asked to remove her.

The department recommended adoption for Juan in the permanent plan report filed December 2, 2010. Juan wanted to be adopted by the foster parents whom he loved and loved him. Juan was thriving in the foster home. He was able to express his love for his foster parents. Juan referred to them as "mom" and "dad." There was a bond with his siblings; however, it was not enough to dissuade him from wanting to be adopted by his foster parents. Juan looked forward to visiting with his siblings. He enjoyed spending time with them. However, he was sad that they did not seem as eager to have contact with him as he does with them. Juan had monthly contact with Michelle, Nicole and Samuel. He has the siblings telephone numbers but they do not call him. He does not call them.

In a March 17, 2011 status review report, the department indicated the siblings continued to visit with each other. Jennifer was visiting with them more often than she had been. Juan, Michelle and Samuel saw a lot of each other. Nicole, who was absent without leave, would show up for the sibling visits. The older siblings have their own visits. Michelle and Samuel were both doing well in their placements and in school.

Juan was doing well in school. The foster parents had not wavered in their desire to adopt him. Juan reported that he felt “uncomfortable” when his siblings discussed adoption. His sisters made him feel guilty about wanting to be adopted. Juan returned from the visits angry and lashed out at his foster parents. The foster parents were understanding and reassured him. They explained to him that they will always be his sisters and brothers and he can still have contact with them. Juan was in therapy to address family separation, general neglect and adoption issues. The department continued to recommend adoption for Juan.

On May 18, 2011, the department held a team decision making meeting with all the siblings to discuss the adoption process. All the siblings except Jennifer attended the meeting. Juan expressed his desire to be adopted. His siblings disagreed and were concerned that adoption would preclude them from seeing Juan. Michelle stated that, while she was staying with the foster family, they told her they thought the older siblings were a bad influence on Juan. Samuel told Juan that adoption meant he would not see his siblings anymore. Caroline stated she had spoken with the mother, who did not want Juan to be adopted. Thus, it appeared that Caroline thought she was protecting her mother’s interests. Caroline wanted to one day care for Juan. It was explained that Juan’s foster parents had agreed to monitored sibling visits if he were adopted. Despite the siblings’ inappropriate behavior, they would continue to allow the visits unless the visits harmed Juan.

The department reported that Juan genuinely wanted to be adopted. His face lit up with a big smile when he talked about his prospective adoptive parents and how he feels about them. Juan has a close relationship with his siblings. He was emotionally torn between the adoption and the thought of losing their love. Juan stated, “The only reason

I would not want to be adopted is because my brother and sisters said that they would not love me.’” Juan would choose adoption with the foster parents if he was forced to decide.

On May 24, 2011, in a last minute information document for the juvenile court, the department reported that Jennifer, who was turning 18 in July 2011, ran away from her placement. Nicole returned from being absent without leave and requested to be replaced because she wanted to go to school. In September 2011, the department reported that Juan still wanted to be adopted. He was hopeful that his siblings would accept his decision. The foster parents indicated that Juan would be allowed to visit his siblings as long as they are conducive to his overall positive well-being. The foster parents were planning Juan’s birthday party and had invited his siblings.

Michelle was doing exceptionally well in her placement. She went to all the sibling visits. Michelle, Nicole, Samuel and Juan participated in the sibling visits. Juan was happy to see them and greeted them with hugs and kisses. He was excited for Caroline when she purchased a car. The older siblings visited each other on their own. Jennifer was still absent without leave. She dropped out of school and gave birth to a baby boy. She wanted her jurisdiction terminated. Samuel was doing well in school but had been yelling at the foster mother. Nicole was removed from her placement because of her behavior.

For the contested section 366.26 hearing on December 6, 2011, the department reported that in November 2011 Juan again said he wanted to be adopted. He did not want to come to court. The foster mother thought that the siblings’ contest had created undue emotional distress for Juan. This was now affecting both his grades and behavior. In atypical behavior, he got an “F” in a subject and was disrespectful to the teacher. Juan was upset because the juvenile court process was taking so long. The foster mother reinitiated therapy for him. Juan was so upset with his siblings for contesting the adoption, he no longer wanted to visit with them. They confused him by telling him that they would all go visit his birth mother. The foster mother was quite upset and frustrated by the unending process, which was also affecting Juan.

Mr. Naples recommended that the adoption proceed. The social worker, Francisco Arreola, spoke to Mr. Naples, Juan's therapist. Mr. Arreola wrote:

"Mr. Naples . . . stated . . . Juan is very clear that he does want to be adopted. Mr. Naples states that Juan is in a good home and recommends for the [a]doption to proceed."

Mr. Naples wrote: "He has been reassured by his adoptive parents that if he wants to maintain contact with his siblings that he will be able to see them and have visits with them after the adoption. He says he knows that [the prospective adoptive parents] love him and he feels secure in their home and he doesn't want to be anywhere else."

Mr. Naples concluded the prognosis for Juan was that "he will continue to flourish after the adoption and that he has a bright future ahead of him.'" According to Mr. Naples, Juan's schoolwork problems had been corrected.

The department assessed Juan's case with a recommendation that parental rights be terminated and that the adoption should proceed. The department reminded the juvenile court that Juan was determined to be adopted despite what his siblings told him. As of December 2011, Juan had been a juvenile court dependent for eight years. The department noted that the foster parents had allowed their own stress to affect Juan's feeling of security and stability. However, the department also noted that the foster parents had endured many years of trying to adopt Juan, without seeing an end. The siblings attempted to sabotage his adoption. The prospective adoptive parents had indicated Juan was old enough to know how to contact his siblings even if they would not allow visits. They indicated that he deserves to and will continue to visit them.

Juan and Nicole are the only two siblings who attended the contested section 366.26 hearing on December 6, 2011. Caroline, Samuel and Michelle refused to attend the hearing. Ms. Waldo, the social worker, testified that she had this case between four to six years. Juan indicated he wanted to be adopted sometime earlier in 2011. Juan had been in his current placement for almost three years. The case had been in dependency proceedings for approximately eight years. When Ms. Waldo first got the case, Juan's then foster mother asked that Michelle, Nicole and him be replaced. This was primarily due to Nicole's and Michelle's behavior. It was difficult to keep them together. This was

because the placements would fall apart for all the siblings due to behaviors. Ms. Waldo, the foster family agency worker, and the foster parents arranged monthly visits. A visit was arranged for Juan's birthday in September. In November 2011, Juan called Ms. Waldo and left a message stating he did not want to go to that month's visit. During the summer, the siblings did not want to meet in public places anymore, so they decided to meet in the foster homes. When Nicole was missing for nine months, she showed up for one or two visits. Caroline and Jennifer usually chose not to have the sibling visits. One of the children was always missing from the visits to do things they thought were more important. They would go to parties, work, refuse or do other things such as buying a car.

Ms. Waldo explained that the team decision making meeting had gone "to shambles" because the older siblings started to say inappropriate things. They became very upset and angry. Notwithstanding their conduct, the prospective adoptive mother stated she would allow Michelle to continue to visit Juan. The foster parents said Michelle was respectful, well-mannered and knew how to hold her temper. The other children could visit if they acted appropriately and respectfully. They could not yell, use profanity or make gestures.

At the conclusion of Ms. Waldo's testimony, the juvenile court allowed the parties to argue. The juvenile court then explained its ruling as follows: "All right. Well, it's pretty clear to me that—I'm very supportive of the sibling exception. And I have found it before in cases where children are placed in different foster homes, but this is -- those are very different circumstances from this case. On other cases the siblings have cared enough to show up. These siblings with the exception of, I think, Nicole -- none of them bothered to show up today, which I think goes to the social worker's statements of a lot of the visits they are not together as a sibling group. The other ones are off doing whatever it is they feel like doing. [¶] And, you know, the sad part is they've been [absent without leave]. I've issued warrants many times for these kids. They just appear. They come back when they feel like it. They are disruptive. It's cost multiple placements for these children, and I think Juan has a right to be in a stable home where he

knows he's loved, and he doesn't have to worry about that being disrupted because of his siblings' behaviors. [¶] And I think he's made a very mature decision that, you know, he may have positive feelings of love towards his sibling[s], but he needs to take care of himself first. He has this opportunity. Apparently, he loves these people a great deal. They return his love. They are willing to make a commitment."

The juvenile court then stated that it would order the department to "try to make sure that the visits continue." However, the juvenile court explained that it was the siblings' conduct which was endangering their potential to keep visiting with Juan. The condition that visits would only continue with respectful behavior was reasonable. However, adoption would not be denied because of the continued visitation issue. The juvenile court found Juan was adoptable and the sibling exception did not apply. The juvenile court then terminated parental rights. Caroline, Samuel, Michelle and Nicole filed this timely appeal.

III. DISCUSSION

Four of Juan's older siblings assert the juvenile court erred in failing to apply the siblings relationship exception to termination of parental rights pursuant to section 366.26, subdivision(c)(1)(B)(v). The sibling exception applies when it is established: "There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." (*Ibid.*)

At a section 366.26 hearing, if the child is likely to be adopted, adoption is the preferred permanent plan. (*In re Celine, R.* (2003) 31 Cal.4th 45, 53; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.) Our Supreme Court has explained the sibling

relationship exception application as follows: “Reflecting the Legislature’s preference for adoption when possible, the ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a “compelling reason” for concluding that the termination of parental rights would be “detrimental” to the child due to “substantial interference” with a sibling relationship.’ [Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61; see also *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952–953.) An appellate court has explained, “[T]he application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.) The party asserting the exception applies has the burden of producing evidence showing the exception applies. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 61; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

There is some discrepancy between appellate courts as to the standard of review for a determination whether an exception to termination of parental rights applies. Some courts have applied the substantial evidence standard of review to the determination of whether an exception exists. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298 ; see also *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [the determination of whether an exceptional circumstance exists is customarily challenged for sufficiency of evidence].) By contrast, other courts have applied an abuse of discretion standard. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1342 [abuse of discretion applied to determination of whether parent-child exception existed]; see also *In re T.S.* (2009) 175 Cal.App.4th 1031, 1038 [Indian child exception].) More recently, courts have applied a kind of hybrid standard of review. (*In re C.B.* (2010) 190 Cal.App.4th 102, 122; *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) Under this standard, the juvenile court has discretion to resolve whether a statutory exception exists such that termination of parental rights

would be detrimental to an adoptable child. (*In re A. A.* (2008) 167 Cal.App.4th 1292, 1322; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1342.) However, the juvenile court's pure factual findings are reviewed for substantial evidence. (*In re C.B.*, *supra*, 190 Cal.App.4th at p. 122; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) In any event, we agree those authorities which note that any practical differences between the two review standards are insignificant. (See *In re C.B.*, *supra*, 190 Cal.App.4th at p. 122; *In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

No doubt, during the eight years the matter was in the dependency courts, the siblings were allowed to visit each other and maintained a relationship. Some of the siblings were close. However, this was not the sole issue to be resolved. Rather, the issue is whether the juvenile court correctly determined any benefit Juan received from his sibling relationship did not outweigh his interest in a permanent plan of adoption. Under either review standard, the termination of parental rights because the sibling exception did not apply must be upheld in this case.

Juan was two years old when he was removed from the custody of his mother in April 2003. He was placed with his five siblings in a foster home for two and one-half years, until September 2006. Including the initial placement, Juan had a total of five placements since 2003. The other four placements were: a second placement with Michelle and Nicole between September 2006 and May 2007; a third placement from May 2007 until October 30, 2008 with Michelle; a fourth placement from October 2008 to January 2009 by himself; and the fifth placement with his current foster family in January 2009, which was initially with Michelle.

The 2003 placement ended when the foster family asked that Juan and his siblings be removed from their home. The removal request was made because of the behaviors of his mother and older siblings. The mother harassed and threatened the foster family. The older siblings became defiant at their mother's urging leading to the request for the removal of all the siblings. While this case has been in the dependency court, his older siblings had numerous replacements because of their defiance of authority in foster homes and at school. Their behavior contributed to requests for removals from other

placements where Juan was placed with one or more of them. Michelle was removed from the placement with Juan's foster parents because of her attitude about his adoption. Furthermore, throughout these proceedings, the older siblings had issues with defying authority in their numerous placements and at school. Some of Juan's older siblings used drugs, ran away from their placements and committed crimes. Samuel was consistently suspended or expelled from school. One sibling, who was suspected of selling drugs, even urged Juan to become a gang member.

Juan was eight years old when he was placed with the prospective adoptive family in January 2009. Juan was 11 years old by the time of the section 366.26 permanent in December 2011. Although initially wavering about whether he wanted to be adopted, from July 2010, Juan remained steadfast in the decision to be adopted. Juan consistently expressed a desire to be adopted to Mr. Naples and his older siblings. This decision was made despite threats by his older siblings that they would not love him if he was adopted. With the exception of Michelle, his older siblings disrupted a May 2011 team decision making meeting to discuss his adoption. In November 2011, Juan refused to visit with his older siblings because of the position they were taking on his adoption. As far as Juan's interests are concerned, allowing this case to continue to linger in the dependency courts makes no sense because of his older siblings' refusal to accept adoption as an option. Juan was flourishing in the foster home and at school. Juan loved and was loved by his prospective adoptive parents. Juan deserved an opportunity to have parents who wanted him to have a stable existence. This would include controlling his contact with older siblings who might disrupt his stability by their behavior. Given these circumstances, the juvenile court's determination that the sibling exception to adoption did not apply must be upheld under any potentially applicable standard of judicial review.

IV. DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

FERNS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.