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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re L.C. et al., Persons Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.W., Defendant and Appellant.	B297517 Los Angeles County Super. Ct. Nos. DK19329A, DK19329B

APPEAL from orders of the Superior Court of Los Angeles County. Nancy Ramirez, Judge. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother appeals from the juvenile court's orders terminating her parental rights to her two children L.C. and T.W. under section 366.26 of the Welfare and Institutions Code.[1] Mother contends the orders must be reversed because her due process rights were violated when she did not receive court-ordered visitation while she was incarcerated, which prevented her from establishing the beneficial relationship exception to the termination of parental rights. We find no prejudicial error and affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's findings, drawing all reasonable inferences in favor of the court's orders. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*).)

1. *Dependency petitions*

In November 2016 and January 2017, the Los Angeles County Department of Children and Family Services (DCFS) filed petitions under section 300 alleging L.C. (born February 2015) and T.W. (born November 2016) were at risk of harm due to mother's substance abuse, and due to mother and father[2] having left L.C. in an unrelated person's home without telling him they had left the child there. Both L.C. and T.W. appeared healthy when they were detained.

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

[2] Father is not a party to this appeal. We limit our discussion of the facts to those relevant to mother's appeal.

Parents had left L.C. with the paternal grandfather and his girlfriend, who were staying at a neighbor's house temporarily, when mother went to the hospital after falling. Mother was nine months pregnant. The grandfather and girlfriend left the child in the neighbor's home unsupervised without arranging for his care. At L.C.'s November 2016 detention hearing, the juvenile court detained L.C. from parents and placed him with a maternal cousin (Ms. G.). The court granted mother two monitored visits per week for a minimum of two hours each visit, limited only by the monitor's availability.

T.W. was born about two weeks after L.C.'s detention hearing. Mother and T.W. lived at a relative's house after T.W.'s birth. On December 23, 2016, Mother entered a residential drug treatment center and brought T.W. with her. She tested positive for methamphetamine on December 23, and tested negative on December 27. In early January, mother left T.W. in the center's daycare and did not return until the daycare was about to close.[3] Mother tested negative for drugs and alcohol on her return.

DCFS social workers spoke to mother in person and by phone about the incident. One social worker explained DCFS could not trust that mother would not leave T.W. again because mother had left L.C. with others without arranging for his supervision. The social worker told mother it would be in her best interest to agree voluntarily to place T.W. with L.C.'s caregiver, Ms. G. The second social worker explained T.W.'s detention with Ms. G. would be temporary pending a January 11,

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[3] Mother had gone to the welfare office to get formula. When she could not, she did not return to the center as required, but left to buy a lighter to smoke a cigarette.

2017 court hearing. If mother did not grant permission, however, DCFS would seek a removal petition that night. Mother agreed to give the baby to her cousin temporarily and handed T.W. over to the social worker after packing the baby's bags.

The juvenile court detained T.W. from her parents at the January 2017 hearing and ordered mother to have three monitored visits per week for up to two hours each visit. Before January, Mother had been visiting L.C. weekly at the DCFS office. In January 2017, Ms. G. agreed to bring L.C. and T.W. to visit mother on the weekends at the treatment center. Mother reported she received visits every other weekend.

A January 2017 report from an initial assessment of L.C. made in December 2016 when he was one year and 11 months old found he was "attached with the biological parents." The report also found mother to be "attentive and engaging" with L.C.

DCFS interviewed mother before the jurisdictional hearing. She told the social worker she smoked medical marijuana, but stopped during her pregnancies. She said she smoked methamphetamine to produce a positive drug test to qualify for the residential drug treatment center.

In March 2017, mother was discharged from the residential drug treatment center after she tested positive for methamphetamine and violated the center's cell phone policy. DCFS arranged for mother to pick up a bus pass, but mother did not show up. Mother also was scheduled to submit to an on-demand drug test, but she did not provide a sample on the scheduled date. DCFS informed the court that mother now was homeless.

On March 16, 2017, mother pleaded no contest to the section 300 petitions and signed a waiver of rights. The juvenile

court sustained the petitions, declared the children dependents of the juvenile court, and removed them from parents' custody. The court ordered family reunification services and monitored visits for mother two times a week for two hours per visit. The court ordered mother to complete a full drug and alcohol program, submit to weekly drug testing, complete parenting classes, and attend individual counseling.

2. *Reunification period*

In its report filed September 1, 2017, DCFS updated the court on the family's status since the March hearing. L.C. and T.W. remained in Ms. G.'s care in Palmdale. They were happy and comfortable, and continued to thrive in her home. DCFS noted L.C. calls Ms. G. " 'Mom' and has developed a bond with her." Ms. G. was interested in legal guardianship if reunification failed.

DCFS reported mother "appear[ed] to not be stable at this time." Mother had been moving around and was arrested three times for prostitution. In June 2017, she told DCFS she had to leave the area because someone had threatened to kill her.

Mother's visits with the children from March to August 2017 were "sporadic." Ms. G. told DCFS mother visited the children at her home "on and off and did not visit the children for a period of three months." When she visited, mother acted appropriately with the children, played with them, and put them down for naps.

In August 2017, mother told DCFS she had returned to the area and was staying at a motel in Palmdale, but still was being threatened. The social worker told mother she no longer could visit the children at Ms. G.'s home due to the death threat. Instead, she could visit the children at the DCFS Palmdale office.

Also in August 2017, DCFS held a meeting to discuss the children's and family's needs, including mother's visitation and permanency for the children. DCFS invited mother to participate, but she did not attend. At the meeting, the team agreed to allow mother to visit the children at the Antelope Valley mall, which was open on weekends and had security guards. A social worker tried to contact mother to tell her about the new visitation location, but mother's phone went straight to voicemail. By August 28, 2017, Ms. G. also had not had any contact with mother since mother's last visit on August 1, 2017.

As of August 30, 2017, mother had failed to comply with the court-ordered case plan. She neither provided proof of participation in any of the court-ordered programs nor submitted to drug testing. The one drug test mother took, in April 2017, was positive for methamphetamine. To date, mother had missed 24 drug tests.

DCFS rated the risk for future abuse and neglect of the children as " '[v]ery [h]igh' " given their young ages and mother's inconsistent visits. It concluded "[t]here is no probability" of the children returning home by the September 18, 2017 six-month review hearing and recommended the court terminate reunification services.

3. *Termination of reunification services*

The September 2017 six-month review hearing was continued several times until April 2, 2018. DCFS's next report to the court was filed February 21, 2018. DCFS informed the court mother had been arrested in November 2017 for assaulting a security officer at a store. She was jailed in Lynwood and released on January 4, 2018. A social worker visited mother in jail at the end of December 2017. At the end of January 2018,

mother had moved into the home of an older man to care for his ill wife. Mother asked the social worker if her children could visit her there, but the social worker explained the visits needed to be "in the community."

On February 1, 2018, a social worker met with mother and asked her to drug test. Mother admitted to having used methamphetamine the night before. Mother had not shown up for any of her scheduled drug tests since her release from jail. She also had not enrolled in any of the court-ordered programs.

At the continued review hearing on April 2, 2018, the juvenile court found the extent of mother's progress "made toward alleviating or mitigating the causes necessitating" the dependency to be "nonexistent." The court terminated reunification services and set a section 366.26 hearing. The court explicitly found DCFS "did make reasonable efforts to assist this family in reunification services, but the parents did not appear to be inclined to participate in the children's lives."

4. *Post-reunification period*

DCFS filed its section 366.26 report on July 25, 2018. It reported mother again was incarcerated at the county jail in Lynwood.[4] She thus had not visited the children. The children remained in Ms. G.'s care and appeared "to be well bonded" with her. DCFS stated Ms. G. wanted to adopt the children.

In its status review report filed September 10, 2018, DCFS reported mother remained incarcerated and had not had any visits with the children. DCFS assessed the children as "physically and emotionally healthy" with a "strong attachment

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[4] Mother was arrested on May 4, 2018 and held on felony charges for taking a vehicle without the owner's consent.

to Ms. G[.]" DCFS noted Ms. G. initially wanted to pursue legal guardianship of the children, but "has decided that adoption is the best option" for them. DCFS recommended adoption.

On October 2, 2018, the juvenile court ordered adoption as the children's permanent plan. DCFS filed an addendum to its section 366.26 report on November 20, 2018. It reported the children continued to be "comfortable and well-bonded to Ms. G. They refer to Ms. G. as mom and seek her out when they have a need." DCFS noted Ms. G. informed them that she "ensures that the children are familiar with their birth mom through pictures and by verbally informing them."

In its status review report filed March 12, 2019, DCFS reported mother had been transferred in January 2019 from the county jail in Lynwood to the state prison in Chowchilla. Ms. G. told DCFS she "used to take the children for visits" with mother when she was in the county jail, but could not take them to visit her in Chowchilla because it was too far away. Ms. G. also reported L.C.'s behavior had changed since visitation had stopped when mother was transferred to Chowchilla. Ms. G. described L.C. as "having emotional meltdowns" and "frequently throwing tantrums at home and while in daycare."

DCFS reported the children continued to thrive in Ms. G.'s care and had a "strong attachment" to her. DCFS recommended termination of parental rights to move forward with their adoption by Ms. G.

5. *Section 366.26 hearing*

The juvenile court held the final section 366.26 hearing on April 22, 2019.[5] Mother was present in custody.

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[5] The hearing was continued several times in part to provide notice to father by publication because DCFS had been unable

Mother's counsel argued termination of parental rights was premature and asked for a continuance. She noted L.C.'s "very, very poor response . . . to the concept of losing his mother." Mother's counsel also contended the latest DCFS report was not accurate. She disputed DCFS's report that Ms. G. had been taking the children to visit mother in the county jail. Mother's counsel told the court mother stated she last saw L.C. on November 3, 2018, and before that, May 3, 2018. Counsel also told the court that mother said she had not seen T.W. since April 2018. Mother's counsel argued that whether the bond between mother and her children had been disrupted therefore was "not accurately before the court." Mother was scheduled for release in June 2019 and asked the court, through her counsel, to insist DCFS facilitate visits from the children until that time.

The court found no legal basis to continue the hearing and proceeded. Mother's counsel objected to termination of parental rights. She argued mother had established her children would benefit from continuing their relationship with her. She argued L.C.'s behavior issues demonstrated his bond with mother. Mother's counsel also contended DCFS and/or Ms. G. had "wrongfully thwarted" mother from developing her relationship with T.W. because visitation had not occurred. She contended termination of parental rights under these circumstances was improper.

Mother's counsel asked the court to proceed with legal guardianship for both children instead of terminating mother's parental rights. Counsel for the children and for DCFS argued

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to locate him. The hearing also was continued to allow mother to be transported to court from jail and then from prison.

for termination of parental rights to allow Ms. G. to adopt the children.

In response, the juvenile court noted the parent has the burden of proof "to demonstrate regular and consistent visitation and contact in order for there to be found a parental bond exception, and the issue is not why they have not had regular and consistent visits but whether there have been consistent and regular visits, and based on the report from April, those regular and consistent visits have not occurred." The court found parents had not maintained regular visitation with the children and had not "reestablished the bond with the children." It concluded any benefit the children would receive from continuing their relationship with parents was outweighed by the benefit they would receive from adoption, adoption was in their best interest, and it would be detrimental to return the children to parents. Finding no exception to adoption applied, the court terminated mother's and father's parental rights and designated Ms. G. as the prospective adoptive parent.

Mother filed a timely notice of appeal on April 22, 2019, challenging the juvenile court's denial of her request for a continuance and an updated report on visitation, and the termination of her parental rights.

DISCUSSION

Mother contends she was unable to present a defense to the termination of her parental rights because DCFS failed to comply with the court's visitation orders, and the court failed to ensure its orders were followed. Terminating her parental rights under those circumstances, she argues, violated her due process rights.

1. *Applicable law and standards of review*

"The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) Thus, once the juvenile court terminates reunification services and determines a dependent child is adoptable, it "must order adoption and its necessary consequence, termination of parental rights, unless one of the specified" exceptions stated in section 366.26, subdivision (c)(1) "provides a compelling reason for finding the termination of parental rights would be detrimental to the child." (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) "The statutory exceptions merely permit the court, in exceptional circumstances [citation], to choose an option other than the norm, which remains adoption." (*Ibid.*, italics omitted.)

One of those exceptions—the beneficial relationship exception—precludes the juvenile court from terminating parental rights if it finds "termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "The exception requires the parent to prove both that he or she has maintained regular visitation and that 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 Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*).) The juvenile court's decision that the beneficial relationship exception does not apply "may be based on any or all of the component

determinations—whether the parent has maintained regular visitation, 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.' " (*Id.* at pp. 646-647.)

We review the juvenile court's determination whether a beneficial parent-child relationship exists for substantial evidence. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We "presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*Autumn H., supra*, 27 Cal.App.4th at p. 576.) We review for abuse of discretion whether a compelling reason exists for finding termination of that relationship would be detrimental to the child. (*K.P.*, at p. 622.)[6] We review claimed constitutional violations de novo. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.)

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[6] Courts of appeal have applied different standards of review to challenges to an order rejecting an exception to adoption under section 366.26, subdivision (c): some have applied the substantial evidence standard, others the abuse of discretion standard, and still others, like *In re K.P.*, have applied a combination of the two. (See *In re G.B.* (2014) 227 Cal.App.4th 1147, 1166, fn. 7 [describing courts' application of different standards of review].) What standard of review governs is currently pending before the California Supreme Court. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, S255839.) On the record before us, we would affirm under either of the above standards. (*In re G.B.*, at p. 1166, fn. 7*;* and see *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [explaining practical differences between substantial evidence and abuse of discretion standards are minor in this context].)

2. Mother's due process rights were not violated

"The Supreme Court has held the statutory procedures used for termination of parental rights satisfy due process requirements only because of the demanding requirements and multiple safeguards built into the dependency scheme at the early stages of the process. [Citations.] If a parent is denied those safeguards *through no fault of her own*, her due process rights are compromised." (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504 (*Hunter S.*), italics added.)

"[T]he erroneous denial of parent-child visitation compromises a parent's due process right to litigate and establish" the beneficial relationship exception to the termination of parental rights. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007.) This is so because "the only way a parent has any hope of satisfying this statutory exception is if she maintains regular contact with her child." Thus, "[m]eaningful visitation is pivotal to the parent-child relationship, even after reunification services are terminated." If the juvenile court grants visitation, " 'it must also ensure that at least some visitation at a minimum level determined by the court itself, will in fact occur.' " (*Hunter S., supra*, 142 Cal.App.4th at pp. 1504-1505.)

From the beginning of this case, mother was permitted visitation. She challenges only the lack of visitation after she was incarcerated in May 2018. Mother argues that had she received visitation during her incarceration before the final section 366.26 hearing, she would have been able to "maintain the bond with her children." She contends the court's failure to ensure she received visitation during her post-reunification incarceration thus violated her due process rights because

it prevented her from establishing the beneficial relationship exception to termination of her parental rights.

We disagree and find no due process violation occurred. The record supports a conclusion that mother herself failed to take advantage of the court-ordered visitation during the reunification period. By the time of mother's incarceration, therefore, she had not developed the type of beneficial parent-child relationship with L.C. and T.W. that would outweigh the well-being they would gain from a permanent, stable home with Ms. G. Thus, her right to litigate the beneficial relationship exception was not compromised by the lack of visits during her post-reunification incarceration.

a. *Mother visited her children inconsistently*

We begin with the visitation mother received. Mother consistently visited the children when they were first detained in late 2016 and early 2017, but her visits became sporadic after her discharge from the residential drug treatment center in March 2017. At the adjudication hearing in March 2017, the juvenile court ordered monitored visitation for mother twice per week. But mother did not take advantage of that order. Rather, she visited the children at Ms. G.'s home "on and off." Mother visited in April and May 2017, but did not visit the children again until August 1, 2017. This large gap between visits was due to mother's own actions: she had been arrested for prostitution and then left the area due to a death threat.

After her one visit in early August 2017, she again did not visit her children of her own accord:[7] she did not attend

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[7] The record is silent as to mother's next visit with her children. We can infer she visited in September or early October 2017. In September, a social worker met with mother and told

the team meeting to discuss her visitation and did not answer DCFS's phone calls about the meeting's results. As of August 28, 2017, mother also had not contacted Ms. G. for any reason, much less to arrange a visit with her children. By late November 2017, mother had been arrested again—this time for assault—and spent the next month and a half in jail until early January 2018.[8] Mother even admitted to using methamphetamine in late January/early February, just months before the court terminated her reunification services.

Accordingly, the record provides substantial evidence that it was mother herself who failed to have "regular and consistent" visitation with her children well before she was incarcerated in May 2018.

b. *The juvenile court did not err when it did not enforce its visitation order during mother's incarceration*

After the juvenile court terminates reunification services and sets a section 366.26 hearing, it must "continue to permit the parent . . . to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." (§ 366.21,

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mother she would schedule visits through Ms. G. when mother asked about seeing the children. It appears mother did not follow the restriction on visiting the children in a public setting, however. In early October 2017, Ms. G. left the social worker a message that she no longer was willing to monitor mother's visits with the children because "mother is in violation of coming to [Ms. G.'s] home."

[8] Mother argues there were no visits facilitated for her while she was in jail during this period, but there also is no evidence mother requested her children be permitted to visit her there. And, of course, it was mother's fault alone that she was in jail.

subd. (h).) DCFS did not facilitate visitation while mother was incarcerated, but section 366.21 does not impose a mandatory duty on the court or child services agency to ensure visitation is "as frequent as possible," as is required during the reunification period. (§ 362.1, subd. (a)(1)(A).) Moreover, neither mother nor her appointed attorney contacted DCFS to request facilitation of visits while she was incarcerated or to report she had asked Ms. G. to bring the children to visit, but had been refused.

Mother's counsel did not ask the court to intervene and require the children be brought to Lynwood or to Chowchilla after mother's transfer until the section 366.26 hearing itself, despite knowledge and opportunity. DCFS first reported in July 2018 that no visitation had occurred between mother and her children due to mother's incarceration. Mother's attorney was present at the July 31, 2018 hearing. Although counsel asked the court to order mother be transported from jail for the section 366.26 hearing scheduled in November 2018, and to order DCFS to discuss both legal guardianship and adoption with Ms. G., counsel never asked the court to order DCFS to facilitate visitation between mother and the children at the county jail nor mentioned visitation at all. In February 2019, mother's counsel again was before the court. Counsel asked the court to continue the hearing to allow time for mother to be transported from Chowchilla, where she had been transferred in January, but did not raise lack of visitation as an issue.

Not until the section 366.26 hearing finally was held in April 2019 did mother's counsel argue mother's visitation had been "thwarted" during her incarceration. The evidence conflicted. Ms. G. reported to DCFS that she had brought the children to visit mother while she was in jail, but mother told

the court through her counsel that she received only one visit from L.C. in November 2018. Her counsel relayed that mother otherwise had not seen L.C. since sometime in May 2018, shortly before she was incarcerated, and had not seen T.W. since April 2018. Admittedly, Ms. G. would not bring the children to Chowchilla to visit mother because it was too far.

We do not find mother's due process rights were violated when the court did not require—without any request by mother—Ms. G. or DCFS to bring a three- to four-year-old and an 18-month to two-year-old to see mother regularly in jail or to travel with them to a prison in Chowchilla. As we have discussed, by the time of her incarceration mother had received over a year of reunification services, had not complied with her case plan, and had not taken advantage of provided opportunities to visit with her children. She never asked DCFS or the court for visits in jail or prison until the literal eleventh hour. (Cf. *Hunter S., supra*, 142 Cal.App.4th at pp. 1502-1503, 1508 [reversing order terminating parental rights where mother was denied visitation and consistently raised the issue with DCFS and the court for over two years].)

There simply was no affirmative failure *to permit* mother to visit her children here, in stark contrast to *Hunter S.,* relied on by mother. There the juvenile court impermissibly delegated discretion to the child's therapist to determine when visitation would occur, who in turn allowed the child to decline almost all visits with his mother. At one point, the mother affirmatively was prevented from visiting with the child for 17 months despite

her continuous efforts to maintain a relationship with him. (*Hunter S., supra*, 142 Cal.App.4th at pp. 1502, 1505.)[9]

Nevertheless, even if the juvenile court should have ensured DCFS facilitated visits between mother and her children while she was incarcerated from May 2018 until the section 366.26 hearing in April 2019, mother was not prejudiced by the error.

3. *Mother would have been unable to establish the beneficial relationship exception even if she had received visits from her children during her post-reunification incarceration*

We conclude any error by the court in failing to have ensured mother had visits with her children during her post-reunification incarceration was "harmless beyond a reasonable doubt." (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 134 & fn. 19 [standard articulated in *Chapman v. California* (1967) 386 U.S. 18 applies to analysis of due process violations in dependency proceedings].) The court did not base its ruling on mother's failure to visit her children while incarcerated alone. It concluded mother did not maintain regular visitation with her children and had not reestablished her bond with them, but also found "any benefit accruing to the children from their relationship with [mother] is outweighed by the physical and

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[9] We note the mother in *Hunter S.* was incarcerated early in her child's dependency for about one year. (*Hunter S., supra*, 142 Cal.App.4th at p. 1501.) She affirmatively maintained contact with her son, however, by writing to him monthly. (*Ibid.*) In contrast, the record contains no evidence mother wrote to her children or arranged telephone calls with them during her incarceration.

emotional benefit they will receive through the permanency and stability of adoption."

"To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed. [Citations.] A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 (*Angel B.*).)

Thus, the "benefit" prong of the beneficial parent exception has been interpreted to mean the parent's 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 other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H., supra,* 27 Cal.App.4th at p. 575.)

"Interaction between natural parent and child will always confer some incidental benefit to the child." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) But "[n]o 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.*, *supra*, 203 Cal.App.4th at p. 621.) "The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences." (*Autumn H.*, at p. 575.) " 'Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.' " (*K.P.*, at p. 621.)

In analyzing whether the parent-child relationship is important and beneficial, a court must examine: "(1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs." (*Angel B., supra*, 97 Cal.App.4th at p. 467.)

The record does not compel a finding that the children had formed a substantial emotional attachment with mother by the time she was incarcerated in May 2018 such that severing the parent-child relationship would substantially harm them. Mother did not meet her children's need for a parent through her sporadic, monitored contact with them during the reunification period. Mother acted appropriately with the children when she did visit—she played with them and put them down for naps—but some loving interactions with her children do not create the

significant attachment required to demonstrate she occupied a parental role in their lives.

Moreover, from March 2017 throughout the rest of the reunification period, mother failed to resolve the issues that led to the removal of her children. She continued to use marijuana and methamphetamine, failed to complete any part of her case plan, and was arrested for prostitution and assault. Significantly, when the court terminated mother's reunification services a month before her incarceration, it not only found her progress toward mitigating the causes leading to the dependency "nonexistent," but also expressly concluded mother "did not appear to be inclined to participate in the children's lives."

In contrast, the children were living stable, comfortable lives and "thriving" with Ms. G. During the first year of the dependency, L.C. had developed a bond with Ms. G. and called her "Mom." By May 2018, L.C. was about three years, three months old and had lived with Ms. G. for a year and a half. T.W. was only one and a half years old by then, and had lived with Ms. G. her entire life, save her first two months. It was Ms. G., not mother, who occupied a parental role in the children's lives—she was the one who provided for their "physical care, nourishment, comfort, affection and stimulation." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.)

Given mother did not significantly involve herself in her children's lives before her incarceration, we have no doubt additional visits between mother and her children while she was incarcerated would not have enabled mother to reestablish her parental role or improved her ability to show termination of her parental rights would be detrimental to L.C. and T.W. As we have said, a showing of regular visitation is insufficient to

overcome the presumption of adoption. Mother must have shown her children had a positive emotional attachment with her that was so strong the children would be "greatly harmed" if deprived of it. Additional time with her children in jail or prison merely would have continued the relationship that already existed—one that very well may have been beneficial to some degree, but nowhere near meeting the children's need for a parent.

Mother nevertheless contends L.C.'s behavioral outbursts after Ms. G. could not take him to visit mother at a far-away prison demonstrates he had a significant attachment to her, making legal guardianship the permanent plan in his best interests. We are not indifferent to L.C.'s reaction, but it falls short of proving he had "a substantial emotional attachment" with mother "that would cause [him] to suffer great harm if severed." (*Breanna S., supra*, 8 Cal.App.5th at p. 648.) DCFS reported L.C. was attached to mother, but that report was based on observations made in December 2016, shortly after L.C.'s detention when mother regularly visited. The record does not support a finding that L.C. maintained a substantial attachment to mother, however. And, there is no evidence in the record that T.W., who lived with mother for only two months, ever developed a substantial emotional attachment with her.

As mother argues, the beneficial relationship exception must be considered in the context of the visitation the parent was permitted, relying on *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537-1538 (*Brandon C.*). In that case, the Court of Appeal affirmed the juvenile court's application of the exception to order legal guardianship instead of adoption where the mother had only weekly visits. (*Id.* at pp. 1532-1533, 1538.) Mother's relationship with her children here is distinguishable, however.

In *Brandon C.*, the mother maintained regular contact with her children and visited them weekly for three years, which was as much time as she was allowed. (*Brandon C.*, *supra*, 71 Cal.App.4th at p. 1537.) The children had a good relationship with their mother, called her " 'Mommy,' " and looked forward to her visits. (*Id.* at pp. 1533, 1536.) They cried for long periods and resisted going to bed after mother's visits. (*Id.* at p. 1535.) Before the section 366.26 hearing, the mother had completed her drug rehabilitation program, tested negative for drugs, and obtained stable employment and housing. (*Id.* at p. 1536.) Here, in contrast, mother did not visit the children as much as she was permitted, did not complete any part of her case plan, tested positive for drugs, and was unstable. L.C. acted out after his visits with mother ceased, when she was transferred to Chowchilla, but nothing in the record shows L.C. had the type of close relationship with mother needed to overcome the presumption of adoption. To the contrary, he called Ms. G. "Mom."

We can infer the trial court weighed the relevant factors when assessing the beneficial nature of the parent-child relationship—the children's young ages, four and two at the time of termination, that L.C. had spent 20 months with mother and more than half his life with Ms. G. and T.W. had spent almost her entire life with Ms. G., the children's need for stability and permanency, and L.C.'s reaction when his visits with mother stopped—to conclude the benefit the children would receive from continuing their parent-child relationship with mother did not outweigh the well-being and stability they would gain in a permanent home with Ms. G. Substantial evidence supports the juvenile court's finding, and no evidence in the record supports

the inference that additional visits during mother's incarceration would have improved her ability to show that termination of her parental rights would be detrimental to the children.

DISPOSITION

The orders terminating parents' parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.