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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re R.P., a Person Coming  
Under the Juvenile Court Law.

B277479

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK74876)

Plaintiff and Respondent,

v.

ANTHONY P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Emma Castro, Juvenile Court Referee. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Anthony P. (father) appeals from the dependency court's orders denying his two petitions under Welfare and Institutions Code<sup>1</sup> section 388 and terminating his parental rights to his six-year-old daughter R.P.<sup>2</sup> Father contends the court erred in denying his petitions without a hearing. He also contends the court erred in denying his request for a contested hearing concerning the applicability of the beneficial parent-child relationship exception to the termination of parental rights under section 366.26, subdivision (c)(1)(B)(i). We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

In December 2013, the Department of Children and Family Services (Department) filed a dependency petition on R.P.'s behalf after receiving a report that father had punched mother in the face in front of the child. The petition alleged mother and father had engaged in domestic violence, mother had problems with substance abuse, and mother had physically abused one of R.P.'s siblings in the past. The court detained R.P., who had been living with father for the previous three months, and ordered her placed in foster care.

In April 2014, the court sustained an amended petition, declared R.P. a dependent of the court, and ordered the Department to provide mother and father family reunification services focused on addressing their issues with domestic violence

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The court also terminated the parental rights of L.R. (mother), who is not a party to this appeal.

and drug use. The court also ordered the Department to allow father to visit with R.P. in a monitored setting three days a week, two hours per visit.

In the first seven months after she was detained, R.P. moved between four different foster homes, settling in the home of O.L. (caretaker) in August 2014, where she still lives. R.P. adjusted quickly to living with her caretaker, and she appeared stable in her placement. The caretaker was attentive to R.P.'s needs and provided her with basic dental and medical care.

As R.P.'s case progressed, mother and father had trouble complying with their case plans. Mother's compliance was minimal, and she eventually stopped contacting the Department and appearing at R.P.'s hearings. The court terminated mother's reunification services in September 2015.

The court extended father's services until February 2016 because he was partially complying with his case plan. For example, he remained in regular contact with R.P. throughout the first 20 months of the reunification period, visiting her three times per week and calling her on a daily basis. In addition, father was allowed to have several unmonitored visits with R.P. between June and December 2015.

According to the Department, father's visits with R.P. generally went well. R.P. looked forward to seeing father, and father engaged with her, helping her draw, solve puzzles, and complete homework. Father had difficulty, however, controlling R.P.'s behavior when she would act out. The Department reported that R.P. would not respond to father's attempts to correct her behavior. For example, when father would tell R.P. she could not do something, such as jump on furniture or play with his phone, she would begin to cry and throw a tantrum.

Father did not know how to respond when R.P. would become upset, often tickling her or trying to make her laugh, which usually would make her behavior worse. R.P. tended to calm down after distancing herself from father during the visits. According to the caretaker, “father is very passive with R.P. and allows her to do what she wants including talk back to him.”

Father struggled to remain drug free throughout the first 15 months of the reunification period. He tested positive for cocaine four times between September 2014 and April 2015, and he tested positive for marijuana in July 2015. Father also failed to consistently appear for mandatory drug tests, missing 11 tests between early October 2014 and late December 2015.<sup>3</sup> Although his case plan required him to enroll in a full drug-rehabilitation program if he tested positive for drugs or missed a mandatory test, father did not enroll in a treatment program until early November 2015, more than a year after he first tested positive for cocaine.

In addition to his issues with drug use, father had difficulties maintaining a stable place to live. As of November 2014, he did not have his own housing and was moving between motel rooms and homes of various family members.

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<sup>3</sup> Specifically, father tested positive for cocaine on September 4, 2014; February 25, March 23, and April 10, 2015. He tested positive for marijuana and alcohol on July 14, 2015, and he missed 11 mandatory drug tests on the following dates: October 9, October 30, November 24, December 9, and December 26, 2014; January 7, January 20, February 11, April 20, September 4, and December 23, 2015. Thus, father’s positive and missed drug tests did not occur as an isolated cluster of deviations from the case plan, but rather were spread out over most of the reunification period.

Father also continued to engage in violence, despite his participation in domestic violence programs. In late December 2015, while working as a pimp, father was arrested for physically assaulting a female prostitute. Father choked the victim until she almost passed out, and he punched and slapped her face.

Father was incarcerated at the Pitchess Detention Center in Castaic for six months, between late December 2015 and mid-June 2016. The court terminated father's reunification services on February 3, 2016, but it ordered the Department to continue to provide him one monitored visit a week while he was in custody. The court set a section 366.26 selection and implementation hearing for June 1, 2016, but it was later continued to August 31, 2016.

The Department was able to provide father only one visit with R.P. while he was incarcerated, which occurred shortly before he was released. Neither R.P.'s caretaker, nor her paternal aunt, who told the Department she would help facilitate visits with father, would take R.P. to father's detention facility.

Father filed a section 388 petition in May 2016, asking the court to reinstate his reunification services and allow him to have unmonitored visits with R.P. because he was participating in substance abuse and domestic violence programs at his detention facility. The court denied father's petition without an evidentiary hearing, finding that he had not demonstrated a change in circumstances or that reinstating his reunification services would be in R.P.'s best interests.

In early June 2016, the Department reported that the caretaker, along with her daughter,<sup>4</sup> wanted to adopt R.P. By this time, the child had been living with her caretaker for nearly two years. R.P. had become closely bonded with and attached to her caretaker, and she was thriving in a stable home environment. R.P. also was performing well in school, and her caretaker frequently helped her with schoolwork and provided her with extra workbooks and educational games.

After father was released from custody on June 21, 2016, he resumed visiting R.P. on a weekly basis, and remained in telephone contact with her on a daily basis, except for a three-week period, when the caretaker took R.P. out of town for vacation.

Father filed a second section 388 petition in early August 2016, again requesting the court to reinstate his reunification services and to return R.P. to his custody. Father alleged a change in circumstances based on his completion of substance abuse and domestic violence courses while he was incarcerated and his enrollment in a post-release domestic violence program. The court denied father's second petition without an evidentiary hearing.

On August 31, 2016, the court commenced the selection and implementation hearing. Father's counsel requested a contested hearing on the applicability of the beneficial parent-child relationship exception to the termination of parental rights.

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<sup>4</sup> When she was initially placed in her caretaker's home, R.P. lived with the caretaker and her husband. However, the caretaker's husband passed away in August 2015. It appears that after the husband passed away, the caretaker's daughter, who is identified only as "Mrs. L." in the record, began helping to care for R.P.

Counsel intended to call father and R.P. to testify about their visitation history and the nature of their relationship. Counsel claimed father could demonstrate he consistently visited with R.P. throughout her dependency case—except for the period he was incarcerated—and that he and R.P. shared a close emotional bond.

The court questioned whether father could establish he maintained regular visitation with R.P. after he had only one visit with the child during the nearly six-month period he was incarcerated. The court requested an offer of proof specifically describing how father would establish he maintained regular contact with the child during that period. Counsel responded that, according to *In re Brandon C.* (1999) 71 Cal.App.4th 1530 (*Brandon C.*), the court should look to how much visitation father was able to receive while he was in custody, as opposed to how much visitation he actually received during that period. The court continued the hearing to September 2, 2016 to review *Brandon C.* and *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, a case the Department argued weighed against applying the exception.

On September 2, 2016, the court resumed the selection and implementation hearing. After hearing argument from father's counsel, R.P.'s counsel (who opposed father's request), and the Department (who also opposed father's request), the court issued its ruling: "The court read both cases and does not find that the case of *In re Brandon C.* to be dispositive on the issues before the court. [¶] In that case, it was undisputed that the mother had visited the children consistently for an entire three-year period of the dependency case. [¶] Further, it was undisputed that there was a close bond between the mother's—between the minors and

the mother, and that continuation of contact would be beneficial. No one disputed that in that case. [¶] This is a very different case, in the court's opinion. This is a child who is age six. She has been under juvenile court supervision since December 4, 2013. In four months, it will have been three years since she was removed from the parents' custody. And for the last seven months, she has had no contact with the father. [¶] The court has also reviewed the case of *In re Lorenzo C.*, and finds that the case to be much more on point to the facts presently before the court. [¶] So, over father's objection, based on the statements the court has made, and based on the record before the court, the court denies father a contested evidentiary hearing to support his position that there exists a beneficial relationship exception" pursuant to section 366.26, subdivision (c)(1)(B)(i). Father's counsel then asked to present additional argument on the exception in lieu of calling father and R.P. to testify, which the court denied.

After admitting the Department's reports into evidence, the court found by clear and convincing evidence that R.P. was adoptable. The court found that no exception to adoption applied, terminated mother's and father's parental rights, and designated the caretaker as R.P.'s prospective adoptive parent. Father filed a timely appeal.

## **DISCUSSION**

### **1. Father's section 388 petitions**

Father contends the court abused its discretion when it denied his two section 388 petitions without an evidentiary hearing. He argues it was error to deny his petitions because he alleged facts to demonstrate (1) a change in circumstances based



on his participation in programs that addressed domestic violence and substance abuse; and (2) that it would be in R.P.'s best interests to reinstate his reunification services and return her to his custody because he shared a "strong bond" with her. We find no error.

### **1.1. Relevant law and standard of review**

Section 388 allows a parent to petition the juvenile court to change, modify, or set aside a prior order based on changed circumstances or new evidence. (§ 388, subd. (a)(1).) The parent must demonstrate both a change in circumstances or new evidence, and that changing the prior order would be in the child's best interests. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157 (*G.B.*.)

To warrant changing a prior order under section 388, there must be a substantial change in circumstances concerning the child's welfare; it is not sufficient to show that circumstances are merely "changing." (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577 (*Heraclio A.*); *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610 (*Baby Boy L.*.) To determine whether the proposed change would be in a child's best interests, courts look to three factors: (1) the seriousness of the problem leading to the child's dependency and the reason for its continuation; (2) the relative strength of the bonds between the child and both her biological parent and her caretaker, as well as the relative lengths of time the child has spent with her biological parent and her caretaker; and (3) the nature of the change of circumstance, the ease by which the change could be brought about, and the reason the change was not made earlier. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685 (*Amber M.*), citing *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530–531.)

To warrant an evidentiary hearing under section 388, a parent’s petition must make a prima showing as to both elements—a change in circumstances and the child’s best interests. (*G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) Thus, the petition’s allegations must be specific and identify the supporting evidence; they may not be conclusory. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) “In determining whether the petition makes the required showing, the court may consider the entire factual and procedural history of the case.” (*In re K.L.* (2016) 248 Cal.App.4th 52, 62 (*K.L.*).

We review a juvenile court’s decision to deny a petition for modification without an evidentiary hearing for an abuse of discretion. (*K.L.*, *supra*, 248 Cal.App.4th at p. 62.)

### **1.2. The petitions and the court’s rulings**

Father’s first section 388 petition, filed in May 2016, requested the court to reinstate reunification services and grant father unmonitored visits with R.P. Father claimed a change of circumstances existed because he “continued to better” himself while incarcerated by participating in a 48-day program that included domestic violence, drug education, anger management, and parenting classes, and he was attending Alcoholics Anonymous and Narcotics Anonymous meetings two days a week. Father asserted it would be in R.P.’s best interests to reinstate his reunification services and grant him unmonitored visits because he shared a strong bond with the child and she had a “strong relationship” with members of his family. According to father, it would be “truly detrimental to sever [R.P.’s] ties with her paternal family.”

Father attached to his petition two letters confirming his participation in classes and Alcoholics Anonymous/Narcotics

Anonymous meetings while in custody. Father did not attach to his petition any additional documents or evidence.

In July 2016, the court denied the petition without granting father an evidentiary hearing. The court checked two boxes on the JV-183 form, finding the petition (1) did not allege new evidence or a change of circumstances; and (2) the proposed change of order would not promote R.P.'s best interests. The court also checked the box marked "other," and explained, "[father] has had no visits with the child from January 2016 to present as he went into custody in Jan. 2016. Father has not completed any of the 4-21-14 case plan." (Emphasis in original.)

Father filed his second section 388 petition in August 2016, about two months after he was released from custody. Father again asked the court to reinstate his reunification services and grant him unmonitored visits with R.P. He also asked the court to return R.P. to his custody. Father alleged, "While incarcerated, I participated in the M.E.R.I.T. program, attended parenting, attended AA/NA meetings twice per week, completed a substance abuse program, and completed an anger management/domestic violence course. Since my release, I have participated in aftercare and additional domestic violence classes. I visit with R.P. weekly." Father claimed it would be in R.P.'s best interests to grant the petition because she shared a "strong" bond with him and his family, he had maintained his sobriety for an extended period of time, and he had completed substance abuse and domestic violence programs after the court terminated his reunification services.

Father attached to his petition two certificates from "Five Keys Charter Schools," showing he had completed substance abuse and anger management/domestic violence courses while in

custody. He also attached a progress report from a “Domestic Violence Batterers’ Program” showing that he had enrolled in a 52-class domestic violence program in early August 2016. Finally, he attached a sign-in sheet, showing he had attended weekly support groups with “Parents in Partnership” from mid-April until late May 2016. Father did not provide the court with any other evidence or documents.

In August 2016, the court denied father’s second 388 petition without an evidentiary hearing. The court again found father did not show a change in circumstances or demonstrate that reinstating his reunification services or returning R.P. to his custody would be in the child’s best interests. The court explained, “The basis for the denial is all of the attachments to the 388 show that the father has either participated or completed programs while in custody, for the most part, in the last 90 days, and the court had this .26 pending for more than 90 days.”

### **1.3. Analysis**

The court properly denied father’s section 388 petitions without a hearing. As we explain in more detail below, father failed to make a prima facie showing under section 388. Specifically, father did not show he had achieved a change in circumstances that would justify delaying R.P.’s placement with an adoptive family by reinstating father’s reunification services and possibly returning R.P. to his custody. Father also failed to demonstrate that delaying R.P.’s adoption would be in the child’s best interests.

**1.3.1. Father failed to demonstrate a substantial change in circumstances.**

With respect to the changed circumstances requirement of section 388, father failed to demonstrate he had adequately addressed his problems with drug use and violence. For example, in December 2015, more than a year and a half into the reunification period, father was arrested for physically assaulting a female prostitute. Notably, father's physical abuse of R.P.'s mother was one of the issues that brought R.P. to the Department's attention two years earlier. Although father attended domestic violence and anger management classes at various times throughout the reunification period, the court was well within its discretion to conclude his participation in those classes had not adequately resolved his issues with violence, as father continued to engage in violent conduct.

With respect to his problems with drug and alcohol use, father showed some sustained progress, having gone about a year without testing positive for cocaine, marijuana, or alcohol, and having participated in drug- and alcohol-abuse related programs by the time he filed his second section 388 petition. The court was within its discretion, however, to conclude that father was still in the process of addressing his issues with substance abuse, and had not demonstrated a "substantial change" that would warrant delaying R.P.'s permanent placement. (See *Heraclio A.*, *supra*, 42 Cal.App.4th at p. 577; *Baby Boy L.*, *supra*, 24 Cal.App.4th at p. 610.) Father tested positive for cocaine four times over a course of seven months during the reunification period, and he tested positive for marijuana over a year into the reunification period. Further, father waited more than a year after he first tested positive for cocaine before enrolling in

a treatment program. In addition, although father had remained sober for a little more than a year by the time he filed his second section 388 petition, he spent approximately half of that time in custody, where his access to drugs and alcohol would have been significantly limited. In short, there is substantial evidence in the record that father had not demonstrated he could remain drug-free to provide R.P. with a safe and stable home environment.

**1.3.2. Father failed to establish that modifying the court's order terminating his reunification services would be in R.P.'s best interests.**

The court was also within its discretion when it found father did not satisfy the best interests requirement of section 388. It is well-established that once a parent's reunification services have been terminated, the primary focus of the dependency proceedings turns toward the need for a permanent and stable home for the child. (*K.L., supra*, 248 Cal.App.4th at p. 62.) At that stage of the proceedings, a rebuttable presumption arises that stability in an existing placement is in the child's best interests, especially where, as here, the child is in a placement that is leading to adoption by long-term caretakers. (*Ibid.*; *In re Angel B.* (2002) 97 Cal.App.4th 454, 464–465 (*Angel B.*.) Thus, a parent seeking to reinstate reunification services or to change the placement of his or her child via a section 388 petition must demonstrate the new or changed circumstances would be in the child's best interests. (See *id.* at p. 464; *In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) As we explained in *Angel B.*, this is a difficult burden to meet once reunification services have been terminated because “a parent's interest in the care, custody and companionship of the

child is no longer paramount.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 464.)

Here, father failed to meet his burden to demonstrate how R.P.’s interests would be best served by changing the child’s placement or reinstating reunification services. It is undisputed that R.P. is closely bonded to her caretakers. She recognizes them as parental figures, she is thriving in their care, and they have provided her a safe, stable, and nurturing home environment for the past two and a half years. Perhaps most importantly, the caretakers are eager and able to adopt R.P. (See *Angel B.*, *supra*, 97 Cal.App.4th at p. 465.)

In contrast to her current circumstances, R.P.’s life before she was placed with her caretakers was riddled with uncertainty and instability, especially during the year leading up to her current placement. Three months before the Department filed its petition, mother and father separated, leading to R.P. having to split time between their homes, a time during which they engaged in domestic violence in front of the child. It then took the better part of a year for R.P. to settle into a stable home, moving between three different foster homes before she was placed with her current caretakers.

In support of his petitions, father did not present any evidence, or even allege, that he would be able to provide R.P. with a stable and nurturing home environment going forward. In fact, all of the evidence before the court at the time it denied the section 388 petitions demonstrates that, for at least the immediate future, father would not be capable of providing a home environment nearly as nurturing and stable as R.P. is receiving from her caretakers. As of November 2015, father did not have stable housing, frequently moving between motel rooms

and the homes of several family members. Nothing in father's petitions suggests that he has obtained stable housing or was at least making significant progress toward that goal as of the time the section 388 petitions were denied.

**1.3.3. The court appropriately considered the allegations supporting father's petitions.**

Father claims the court failed to consider the allegations and evidence supporting his section 388 petitions, thereby depriving him of the opportunity to demonstrate a change in circumstances sufficient to reinstate his reunification services and to return R.P. to his custody. Specifically, Father reads the court's statements that his efforts during the post-reunification period to address his issues with violence and drug use were not sufficient to show a change in circumstances to mean the court ignored father's efforts to address his case-related issues during the post-reunification period. We are not persuaded by father's argument because there is nothing to indicate the court ignored father's allegations and evidence. Instead, the record demonstrates the court considered father's statements that he had participated in case-related programs and classes after the court terminated his reunification services, but found those efforts were not sufficient to demonstrate father had achieved a substantial change in circumstances that would warrant halting R.P.'s progress toward adoption and returning her proceedings to the reunification stage.

**2. The beneficial parent-child relationship exception to the termination of parental rights**

Father raises the following challenges to the court's finding that the beneficial parent-child relationship exception to the



termination of parental rights did not apply in this case: (1) the court violated his due process rights because it denied him the opportunity to present a complete offer of proof as to why the exception applied; (2) the court erred in denying his counsel the opportunity to present oral argument addressing the applicability of the exception; (3) the court abused its discretion in denying him an evidentiary hearing on the exception; and (4) the court erred in finding the exception did not apply to R.P.'s case. We find no reversible error.

### **2.1. Relevant law and standard of review**

Section 366.26 governs the termination of parental rights and the selection of a permanent placement plan for a dependent child. The statute is intended to “provide stable, permanent homes” for dependent children, and it expressly identifies adoption as the preferred plan once reunification services have been terminated. (§ 366.26, subd. (b).) To implement a plan of adoption, the court must find by clear and convincing evidence that the dependent child is adoptable. (§ 366.26, subd. (c)(1).) Once the court finds a child is adoptable, it must terminate parental rights, unless it finds termination of those rights would be detrimental to the child under one or more statutorily defined exceptions, including the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(A)-(B).)

A parent seeking to prevent termination of his or her parental rights under the beneficial parent-child relationship exception must satisfy a two-prong test. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612 (*Grace P.*)). The first prong requires the parent to demonstrate that he or she has maintained regular contact with the child. (*Ibid.*) The second prong requires the parent to demonstrate there is a sufficiently strong bond between

the parent and child such that the child would suffer detriment from the termination of the parent's rights. (*Ibid.*)

The burden is on the parent seeking to prevent the termination of his or her parental rights to produce evidence to establish the beneficial parent-child exception applies. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) To meet this burden, a parent may request a contested hearing. (*Grace P., supra*, 8 Cal.App.5th at p. 612.) Consistent with evidentiary and due process principles, the court may request the parent to make an offer of proof “‘to clearly identify the contested issue(s) so it can determine whether a parent's representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses.’ [Citation.] The parent's offer of proof ‘must be specific setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.’ [Citation.]” (*Id.* at p. 612.) We review the court's denial of a contested hearing for an abuse of discretion. (*In re. A.B.* (2014) 230 Cal.App.4th 1420, 1434.)

**2.2. The court did not preclude father from making a complete offer of proof or from arguing the beneficial parent-child exception applied to R.P.'s case.**

Father contends the court erred by precluding him from making a complete offer of proof addressing the applicability of the beneficial parent-child relationship exception. He argues he attempted to make a “specific offer of proof by telling the court that he would testify, and would call R.P. to testify, about their relationship,” but the court prevented him from doing so. Father also contends the court improperly precluded his counsel from

arguing the applicability of the exception to R.P.'s case. The record does not support father's arguments.

As a preliminary matter, we note father does not identify in what way the court precluded him from making a complete offer of proof or what additional evidence he could have offered to present to the court to warrant a contested hearing. In fact, the record demonstrates the court allowed father's counsel ample opportunity to argue why father believed the exception applied and to identify what evidence father could present to establish the requirements for the exception.

When father's counsel raised the applicability of the beneficial parent-child relationship exception at the beginning of the selection and implementation hearing, she told the court she would present evidence that established father had visited regularly with R.P. throughout her case, except for the six-month period during which he was incarcerated, and that father and R.P. share an "appropriate bond." She stated father and R.P. would testify about the frequency and nature of their visits. The court then inquired about father's ability to establish the regular visitation requirement in light of the fact that he visited with R.P. only once while he was incarcerated for six months. The court allowed father's counsel to describe the circumstances surrounding father's incarceration and his inability to visit with R.P., and counsel convinced the court to continue the hearing to consider a case she believed weighed in father's favor for establishing the regular visitation requirement. When the court resumed the hearing two days later, father's counsel again was given the opportunity to describe what evidence supported father's assertion that the exception applied. On this record, we cannot conclude the court prevented father or his counsel from

making a complete offer of proof concerning the applicability of the exception.

We also reject father's contention that the court precluded his counsel from arguing the exception applied to R.P.'s case. Although the court denied counsel's request on the second day of the selection and implementation hearing to continue to present argument on the applicability of the exception, the court only did so after it allowed counsel to make an offer of proof and argue why father's supporting evidence would be sufficient to establish the exception's requirements. Father cites no authority that supports his contention that the court should have allowed his counsel to continue to argue why the exception applied once the court determined counsel's initial offer of proof and argument were insufficient to warrant a contested hearing on the applicability of the exception.

**2.3. The court did not abuse its discretion in denying father a contested hearing on the applicability of the beneficial parent-child relationship exception.**

Father next contends the court erroneously denied him a contested hearing on the applicability of the beneficial parent-child relationship exception. Specifically, he argues the court abused its discretion by denying him a hearing on the grounds that he did not maintain regular visitation with R.P. while he was incarcerated. He argues the court focused too narrowly on the actual number of visits he had with R.P. while he was incarcerated, and it instead should have recognized he was not able to visit R.P. during that period due to no fault of his own. According to father, had the court properly considered his inability to visit with R.P., his offer of proof would have been

sufficient to trigger a contested hearing on the applicability of the exception. As we will explain, the court did not abuse its discretion in denying father a contested hearing.

We share father's concern that the court focused too narrowly on his lack of visitation with R.P. while incarcerated. There is nothing in the record to indicate father was responsible for R.P. not being able to visit him while he was in custody. It is also undisputed that father regularly visited and remained in contact with R.P. throughout her dependency case while he was out of custody, and there is nothing in the record to suggest father would not have maintained regular visitation with R.P. had he not been incarcerated. We do not need to decide, however, whether father made a sufficient offer of proof with respect to the first prong of the exception's test because his offer of proof as to the second prong was insufficient to require a contested hearing.

As noted, a parent seeking to prevent the termination of parental rights under the beneficial parent-child relationship exception must establish (1) that he maintained regular visitation with his child; and (2) that he shared a sufficiently strong bond with the child such that the child would suffer detriment from the termination of the parent's rights. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) Under the second prong, the nature of the relationship between the parent and child is key; it is not sufficient to show that the child derives some benefit from the relationship or shares some " 'emotional bond' " with the parent. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*)). Instead, the parent must demonstrate that he or she occupies a "parental role" in the child's life. (See *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324 [parent did not establish exception applies because she occupied only a "pleasant

place,” but not a parental role, in the child’s life]; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*.)

To establish the second prong, a parent must show more than frequent and loving contact or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “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.) The relationship required for the exception to apply “arises from the day-to-day interaction, companionship and shared experiences.” (*Ibid.*)

“[T]he 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.” (*Angel B.*, *supra*, 97 Cal.App.4th at p. 466, italics removed.) In addition, a parent must prove 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.’ [Citations.]” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

Generally, it is only in an “extraordinary case” that preservation of the parent’s rights will prevail over the preference for adoption because, by the time a section 366.26 hearing occurs, the court has “ ‘repeatedly found the parent unable to meet the child’s needs.’ [Citation.]” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Factors to consider in determining whether the exception applies 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 . . . .” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) As noted, to warrant a contested hearing on the applicability of the

exception, the parent's offer of proof must specifically identify what evidence the parent can produce to establish the exception's requirements, and not just the ultimate facts or issues the parent wants to establish. (*Grace P.*, *supra*, 8 Cal.App.5th at p. 612.)

Here, father's offer of proof was deficient as to the second prong. Father claimed his and R.P.'s testimony would demonstrate he and R.P. shared an emotional bond and interacted well during their visits. Specifically, father's counsel asserted father could establish that he was "engaged and affectionate" with R.P. during visits, and that he would help her "complete her homework[,] . . . draw and complete puzzles." Counsel asserted "R.P. seems to enjoy these activities and is very engaged and interactive. [¶] R.P. appears to have an appropriate bond with her father." Later in the selection and implementation hearing, counsel claimed, "[father] had quality, consistent visits where he was helping the child with her homework and doing other things that a father would do and having daily calls." All of these aspects of father's relationship with R.P. were already addressed in the Department's reports and other evidence the court had before it at the time of the selection and implementation hearing.

Father did not claim, however, that he could produce any evidence demonstrating he occupied the necessary parental role in R.P.'s life. Indeed, father never claimed he could address the most troubling aspects of the Department's reports—that is, his inability to exercise appropriate parenting skills during his visits with R.P. Both the Department and R.P.'s caretaker reported that father was unable to control R.P.'s behavior during visits, and that R.P. did not listen to father when he tried to discipline her or tell her not to engage in certain behavior. Instead, the

child would become more upset when father did try to address her behavior, which typically involved tickling R.P. or trying to make her laugh. In addition, the caretaker reported that father was very “passive” during visits and did not assume a parental role over R.P. Without offering to rebut this evidence, father failed to make a sufficient showing that he could satisfy the second prong of the beneficial parent-child relationship exception.

We recognize that in *Grace P.*, an opinion we recently published, we reversed a juvenile court’s denial of a father’s request for a contested hearing to establish the beneficial parent-child relationship exception. (*Grace P.*, *supra*, 8 Cal.App.5th at pp. 611–615.) We held the court abused its discretion in denying a contested hearing because the father offered to introduce evidence that, if true, could establish he shared the type of relationship with his child required to establish the exception’s second prong. (*Id.* at pp. 613–615.) *Grace P.* is distinguishable on its facts.

In *Grace P.*, it was undisputed that the father maintained regular contact with his child throughout the dependency proceedings and therefore could establish the exception’s first prong. (*Grace P.*, *supra*, 8 Cal.App.5th at p. 613.) In addition, the father claimed he could present evidence about “the positive quality of his visitation, **how he parented all three children during visits, and how the children considered him to be a father figure.**” (*Id.* at pp. 614–615, emphasis added.) The father also asserted one of the children could testify that she “enjoyed visits with [the father], **saw [the father] as a parent,** and would be sad if visitation with [the father] ended.” (*Ibid.*, emphasis added.) In this case, on the other hand, father never claimed, nor does he claim now on appeal, that he would be able



to present evidence that could establish he occupied a parental role in R.P.'s life or that she viewed him as a parental figure. Without such evidence, father cannot satisfy the requirements for the beneficial parent-child relationship exception.

### **DISPOSITION**

The dependency court's orders denying father's section 388 petitions and terminating his parental rights are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

GOSWAMI, J.\*

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