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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B250739  
(Los Angeles County  
Super. Ct. No. CK68806)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County of Los Angeles, S.  
Patricia Spear, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,  
Kristine P. Miles, Principal Deputy County Counsel for Plaintiff and Respondent.

## INTRODUCTION

S.J. (mother) appeals from the juvenile court's order terminating her parental rights to her son, J.O., based on her failure to reunify with him or establish that she had developed a beneficial parental relationship with him, the termination of which would be detrimental to him. We hold that because there was insufficient evidence to show that mother had developed a beneficial relationship with J.O., and because the juvenile court acted within its discretion in concluding that termination would not be detrimental to J.O., the court did not err in terminating mother's parental rights. We therefore affirm the order terminating parental rights.

## FACTUAL AND PROCEDURAL BACKGROUND

In April 2011, three days after his birth, J.O. came to the attention of the Department of Children and Family Services (DCFS) based on a referral of general neglect by mother. Mother had three other children removed from her care due to, inter alia, her substance abuse. The juvenile court had terminated her parental rights to two of those children in May 2009, and the court had scheduled a Welfare and Institutions Code section 366.26<sup>1</sup> hearing regarding the third child.

In May 2011, DCFS filed a section 300 petition based on the parents' substance abuse issues. As to mother, DCFS in the petition, as subsequently amended by interlineation, alleged, "[Mother] . . . ha[d] a history of illicit drug use, which periodically render[ed her] incapable of providing regular care for [J.O.] [J.O.'s three] siblings . . . received Permanent Placement Services due to . . . mother's illicit drug abuse. [Mother's] use of illicit drugs endanger[ed J.O.'s] physical . . . safety and place[d J.O.] at

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

risk.”<sup>2</sup> At the detention hearing, the juvenile court detained J.O. and ordered monitored parental visitation with him a minimum of “3x or 3 hours per week.”

At the jurisdiction hearing in June 2011, the juvenile court sustained the petition under section 300, subdivision (b). According to the juvenile court, the parents’ histories of illicit drug use rendered them incapable of providing regular care for J.O. and placed him at risk of harm.

At the July 2011 disposition hearing, the juvenile court declared J.O. a dependent child under section 300, subdivision (b) and ordered him suitably placed. The juvenile court ordered DCFS to provide parents with reunification services, including a drug rehabilitation program with random blood testing, parenting classes, and individual counseling. The juvenile court ordered monitored parental visitation and granted DCFS discretion to liberalize.

In January 2012, DCFS reported to the juvenile court that J.O. had been placed with foster parents who were interested in providing him a permanent home if his parents failed to reunify with him. DCFS further reported that mother had “walked out” of her drug rehabilitation program, but had continued to have appropriate weekly visits with J.O. DCFS recommended six additional months of reunification services for parents. At a January 2012 status review hearing, the juvenile court found that a return to parents’ custody at that time would create a substantial risk of detriment to J.O., but ordered further reunification services.

In June 2012, the private foster family agency through which J.O.’s foster parents were licensed reported to the juvenile court that J.O. had been placed with his foster parents for 10 months and was “at ease with his foster family and look[ed] to them for comfort and security. . . .” Although mother and father visited consistently with J.O. at the foster agency, the agency expressed concern to the juvenile court about the “level of care” they provided to J.O. during visitation. According to the foster agency, the parents’

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<sup>2</sup> DCFS in the petition asserted similar allegations concerning father’s illicit drug use and the resulting risk of harm to J.O. Father, whose parental rights were also terminated by the juvenile court, is not a party to this appeal.

“visitation ha[d] not progressed and there ha[d] been little movement and progress on their case over all. [P]arents ha[d] been given multiple opportunities to strengthen their connection to [J.O.] and move their case toward reunification but ha[d] not done so.” Accordingly, the foster agency recommended that the case not be continued for an additional six months.

In a June 2012 status review report, DCFS reported that mother was not complying with the juvenile court’s order to participate in a substance abuse program. Nevertheless, because the parents’ visits with J.O. generally went well, DCFS recommended additional reunification services for them.

In June 2012, J.O.’s foster parents filed a request for de facto parent status with the juvenile court. The juvenile court granted the foster parents’ request at a 12-month status review hearing, but continued reunification services for parents.

In an 18-month status review report, DCFS advised the juvenile court that parents struggled with establishing a bond and relationship with J.O. and that it was a “constant struggle” for parents to comply with juvenile court orders. DCFS recommended that the juvenile court terminate reunification services and implement a plan for adoption by the foster parents. The juvenile court set the matter for a contested hearing in January 2013. At the hearing in January 2013, the juvenile court found that parents were not in compliance with their case plans and that returning J.O. to their care would create a substantial risk of physical and emotional detriment to J.O. The juvenile court therefore terminated reunification services.

In a section 366.26 report, DCFS informed the juvenile court that J.O. was securely bonded to his foster parents and viewed himself as a member of their family. Although mother’s monitored visits with J.O. had been consistent, they had not progressed beyond three hours a week. DCFS recommended that mother’s and father’s parental rights to J.O. be terminated and that he be freed for adoption.

At the July 2013 section 366.26 hearing, the juvenile court admitted the following documentary evidence: the section 366.26 report in its entirety; a July 17, 2013, last minute information for the court; and a July 17, 2013, status review report. Mother then

testified as follows: Mother was in her early twenties and became a dependent of the juvenile court system when she was born. She resided with either her grandparents or in foster homes growing up.

Mother visited with J.O. once a week for three hours at the foster family agency. A social worker monitored her visits. Other than “a couple” of visits that she missed because she was sick, mother visited J.O. every week. During her visits, she brought J.O. food and they would play and watch television. J.O. called her “momma.”

Mother admitted that her relationship with J.O. could have been better, but she had not been allowed to visit him more often as she had requested. Mother did not agree with DCFS’s recommendation that her parental rights to J.O. be terminated. She wanted to be part of J.O.’s life and felt she was a positive influence in his life. Mother asked the juvenile court not to terminate her parental rights.

Following argument, the juvenile court made the following ruling: “The Court: It is a very sad case because [mother] has been through the system. Unfortunately, she’s had a lot of issues with marijuana and drugs, and she hasn’t really completed her programs enough to get further into reunifying with [J.O.] And so the court’s job is basically to follow the law. [¶] And so in order for the court not to terminate parental rights under the exception that [mother] meets—she has maintained visits, but the court in order to not terminate parental rights would have to find it was a compelling reason to find it would actually be detrimental for [J.O.] to not terminate [mother’s] parental rights and it would be bad for [J.O.] to not see [mother] anymore, and the court can’t make that finding. [¶] And I assume you’re attorney’s discussed that with you, but there is a lot of case law because this is obviously something that parents feel very strongly about. But having just monitored visits and given that [J.O.] is so young and given too I saw on petitioner’s [exhibit] 2 that [mother’s] actually maybe not even in her program anymore and so still possibly struggling with her sobriety, the court can’t make any kind of finding, pursuant to the code, that would allow it to not terminate parental rights. [¶] The language of the code is mandatory that, if the child is adoptable, the court does find by clear and convincing evidence that [J.O.] is adoptable and that it would be detrimental for

[J.O.] to be returned to the parents at this time. So continued jurisdiction of [J.O.] is necessary under [section] 300(B). [¶] . . . [¶] And so at this time the court will terminate the parental rights of the [mother] and [father], and any other parents claiming to be the parents of [J.O.] . . . pursuant to section 366.26. [¶] [J.O.’s] care, custody, and control is taken from the parents and placed with the [DCFS], and [J.O.] is declared free from the care, custody, and control [of parents]. He is placed with the Department for adoptive planning and placement. [¶] . . . [¶] The court does terminate parental rights at this time and finds that the plan is for adoption. The court finds that the de facto parents are the prospective adoptive parents.”

## DISCUSSION

### A. Applicable Legal Principles

#### 1. *Section 366.26 and Beneficial Relationship Exception to Preference for Adoption*

“At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [86 Cal Rptr.2d 739].) To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily specified exceptions (§ 366.26, subd. (c)(1)(A)-(B)), the juvenile court ‘shall terminate parental rights’ (§ 366.26, subd. (c)(1)). [¶] Section 366.26 provides an exception to the general legislative preference for adoption when ‘[t]he court finds a compelling reason for determining that termination would be detrimental to the child’ (§ 366.26, subd. (c)(1)(B)) 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 ‘benefit’ prong of the exception requires the parent to 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.’ (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [32 Cal.Rptr.2d 535]; see also *In re Derek W.*, *supra*, 73 Cal.App.4th at p. 826 [‘parent has the burden to show that the statutory exception applies’].) No matter how loving and frequent the contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’ (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108 [89 Cal.Rptr.2d 664]; see *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 [35 Cal.Rptr.2d 162].) The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’ (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [82 Cal.Rptr.2d 426].) Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in *an extraordinary case* that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 [93 Cal.Rptr.2d 644].)” (*In re K.P.* (2012) 203 Cal.App.4th 614, 620-621, *italics added.*)

## 2. *Standard of Review*

Mother maintains that the appropriate standard for reviewing a juvenile court’s ruling concerning the existence of the beneficial parental relationship exception is the substantial evidence standard. In doing so, she takes issue with the recent holdings in cases such as *In re K.P.*, *supra*, 203 Cal.App.4th 614, which concluded that the appropriate standard of review is a mixed standard that requires the application of both the substantial evidence and abuse of discretion standards.

We disagree with mother’s statement of the standard of review and instead follow the standard articulated in *In re K.P.*, *supra*, 203 Cal.App.4th 614. “For years California courts have diverged in their view about the applicable standard of review for an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. Most courts have applied the substantial evidence standard of review to this determination (see, e.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953 [124 Cal.Rptr.2d 688]), although at least one court has concluded that it is properly reviewed for an abuse of discretion (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351). Recently, the Sixth Appellate District has cogently expressed the view that the review of an adoption exception incorporates both the substantial evidence and the abuse of discretion standards of review. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [117 Cal.Rptr.3d 568] (*Bailey J.*)). The *Bailey J.* court observed that the juvenile court’s decision whether an adoption exception applies involves two component determinations: a factual and a discretionary one. The first determination—most commonly whether a beneficial parental or sibling relationship exists, although section 366.26 does contain other exceptions—is, because of its factual nature, properly reviewed for substantial evidence. (189 Cal.App.4th at p. 1314.) The second determination in the exception analysis is whether the existence of that relationship or other specified statutory circumstance constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’ (§ 366.26, subd. (c)(1)(B); see *Bailey J.*, at p. 1315.) This “‘quintessentially” discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,’ is appropriately reviewed under the deferential abuse of discretion standard. (*Bailey J.*, at p. 1315.)” (*In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622.)



## **B. Analysis**

### *1. Beneficial Relationship*

Mother contends that the evidence showed that she had established a beneficial parental relationship with J.O. According to mother, she visited J.O. regularly and, as a result, he had a significant, positive, and emotional attachment to her.

It is undisputed that mother visited J.O. on a regular basis, albeit in a monitored setting. It is equally undisputed, however, that mother's visitation never changed from the three hours per week initially ordered by the juvenile court in July 2011 and that her visitation never advanced to an unmonitored setting—i.e., over the two-year period of the dependency, mother made little or no progress in occupying a parental role in J.O.'s life.

In addition, mother's testimony showed that during her visits with J.O., they played and watched television. But that testimony described a relationship more akin to a friendship, as opposed to the required parent-child relationship. Thus, there was insufficient evidence to establish that mother's relationship with J.O. promoted his well-being to such an extent that it outweighed the benefit J.O. would derive from a permanent home with his prospective adoptive parents. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Accordingly, the juvenile court correctly concluded that mother had failed to show that she had a beneficial parental relationship with J.O.

### *2. Detriment from Termination*

Even assuming that the evidence supported a reasonable inference that mother had developed a beneficial parental relationship with J.O., the juvenile court did not abuse its discretion by determining that the relationship did not constitute a compelling reason for concluding that termination of mother's parental rights would be detrimental to J.O. It was undisputed that, in granting the prospective parents de facto parent standing, the juvenile court already found that they had "assumed, on a day-to-day basis, the role of a parent, fulfilling [J.O.'s] physical and psychological needs for care and affection, and . . . [had] assumed that role for a substantial period." (*In re Merrick V.* (2004) 122

Cal.App.4th 235, 256.) And, at the time of the section 366.26 hearing, the evidence confirmed that J.O. was securely bonded to his prospective parents and viewed himself as a member of their family. By contrast, the evidence showed that mother's visits with J.O. never progressed beyond monitored, three-hours-a-week visits, and that, according to DCFS, she struggled to establish a bond with J.O. and to comply with the juvenile court's orders. The juvenile court had also terminated mother's reunification services based, in large part, on her failure to successfully complete her mandatory drug rehabilitation program.

Based on the evidence, even if there were a beneficial parental relationship, it was not arbitrary, capricious, or patently absurd for the juvenile court to conclude that termination of mother's parental rights would not be detrimental to J.O. and that the benefits to be derived from adoption by a family to which he was bonded and of which he considered himself a member, outweighed any benefit J.O. might derive from a continued relationship with mother. The evidence did not support a reasonable inference that this was the "extraordinary" type of case necessary to overcome the statutory preference for adoption. Therefore, the juvenile court did not err in terminating mother's parental rights to J.O.

**DISPOSITION**

The juvenile court's order terminating parental rights is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.