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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B293165

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK21393A)

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County. Martha Matthews, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, Kristine Miles,  
Assistant County Counsel, and David Michael Miller, Deputy  
County Counsel, for Plaintiff and Respondent.

A.D. (Mother) appeals the juvenile court's order terminating parental rights over her son, P.Z. She contends the court should have applied the beneficial parent-child relationship exception to the preference for adoption found in Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i).<sup>1</sup> We find no error and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On January 28, 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a report that Mother tested positive for amphetamines shortly after giving birth to P.Z. During the subsequent investigation, a hospital social worker reported that Mother and P.Z. tested positive for opiates and amphetamines, and P.Z. was exhibiting withdrawal symptoms.<sup>2</sup> P.Z. remained in the hospital for several days for doctors to monitor his withdrawal symptoms. A hospital social worker reported that Mother had visited P.Z. and was "bonding well with the baby."

Mother told a DCFS social worker she had been using heroin daily for the past four years, but drastically decreased her use after she learned she was pregnant. Mother denied currently using methamphetamine or any other drugs, but acknowledged having done so in the past.

P.Z.'s father (Father) reported that, despite living with Mother while she was pregnant, he was not aware she had been using heroin. Father admitted he also had a prior history of drug

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

<sup>2</sup> Medications Mother received after delivery may have caused the positive opiate result.

use, including methamphetamine and heroin, but insisted he had not used drugs for a year. Father agreed to submit to a drug test, but he failed to do so. A criminal background check showed that Father had recently been arrested for possession of a controlled substance.

On February 8, 2017, DCFS filed a petition asserting P.Z. is a person described by section 300. The petition alleged, among other things, that Mother's and Father's drug use endangered P.Z.'s physical and emotional health and safety and placed him at risk of physical and emotional harm, damage, and danger. The court ordered P.Z. detained, and DCFS placed him in the home of his paternal grandparents. Mother and Father were granted monitored visits a minimum of twice per week.

The court held a combined jurisdiction/disposition hearing on April 4, 2017, at which it sustained the petition in part, declared P.Z. a dependent of the court, removed custody from both parents, and ordered DCFS to provide family reunification services. The parents' case plans included requirements that they each participate in a developmentally appropriate parenting program, a full drug and alcohol program, and weekly drug testing. The court ordered continued monitored visits for the parents with P.Z.

Over the next year, DCFS reported that P.Z. developed a "strong bond" with paternal grandparents and was "thriving and well cared for" in their home. Paternal grandparents indicated they wanted to adopt P.Z.

Mother and Father typically visited P.Z. two to three times per week for two to three hours per visit. Mother told DCFS she would "play[], read[] and sing[]" to P.Z. during the visits. Paternal grandmother reported that Mother and Father were

“appropriate” with P.Z., but they occasionally arrived late to visits or canceled at the last minute. Paternal grandmother also said she often invited the parents to P.Z.’s appointments, but they did not make the effort to attend.

P.Z. attended weekly infant massage therapy sessions over a three-month period to improve the regulation of his physical and emotional state. The program manager reported that Mother was present at only three or four sessions, but P.Z. appeared to be comfortable around her. The manager indicated Mother was loving and interacted well with P.Z.

As of the 12-month review hearing, Father had failed to comply with his case plan and Mother had only partially complied with hers. Although Mother completed a parenting class, she was discharged from her substance abuse program, she failed to appear for weekly drug tests, and she failed to maintain consistent contact with her DCFS social worker. The juvenile court terminated family reunification services.

At the section 366.26 hearing, P.Z.’s counsel and DCFS recommended the court terminate parental rights. Mother and Father urged the court to refrain from doing so, relying on the beneficial parent-child relationship exception found in section 366.26, subdivision (c)(1)(B)(i). Mother’s counsel argued there was “a special bond between [Mother] and the child. She visits the child as much as she can, as the caregiver—depending on the caregiver’s availability. And every time she leaves the child, the child cries for her . . . .”

The court terminated parental rights and designated paternal grandparents as prospective adoptive parents. The court explained that it did not “have the evidence that I would need to have to find that the child’s bond with either parent

outweighs the importance to this child, at this phase in the case, of having permanence and stability.”

Mother timely appealed.

### DISCUSSION

Mother’s sole contention on appeal is that the juvenile court erred in terminating her parental rights because the beneficial parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i) applied. We disagree.

At a section 366.26 hearing, the court must select a permanent plan. If the child is adoptable, there is a strong preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528; *In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*); *In re Casey D.* (1999) 70 Cal.App.4th 38, 50 (*Casey D.*)). However, section 366.26 creates an exception to the legislative preference for adoption if “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” because (1) the parents have maintained regular visitation and contact with the child, and (2) the child would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i); see *K.P.*, *supra*, at p. 621.) The parent bears the burden to demonstrate this exception applies. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300 (*Noah G.*)).

There is no dispute that Mother maintained regular visitation and contact with P.Z.<sup>3</sup> The only issue, therefore, is whether P.Z. would benefit from continuing the relationship. “The ‘benefit’ prong of the exception requires the parent to prove

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<sup>3</sup> The court did not make oral findings about the consistency of Mother’s visitation; the relevant minute order indicates the court found Mother did not maintain regular visits with P.Z. DCFS acknowledges Mother met the first prong of the exception.

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.’ ” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The court considers factors such as “ ‘(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 the interaction between the parent and the child, and (4) the child’s particular needs.’ ” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Frequent and loving contact with the child is not enough to establish a beneficial parental relationship. (*Noah G.*, *supra*, 247 Cal.App.4th at p. 1300; *K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Instead “ ‘the parents must show that they occupy “a parental role” in the child’s life.’ [Citations.] 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.’ [Citation.] 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.’ ” (*K.P.*, *supra*, at p. 621; *In re Scott B.* (2010) 188 Cal.App.4th 452, 469 [“it is only in exceptional circumstances that a court will choose a permanent plan other than adoption”].)

“Appellate courts have adopted differing standards of review for the parental relationship exception determination. Many courts review for substantial evidence. [Citations.] Other

courts have applied an abuse of discretion standard of review. [Citations.] More recently, courts have adopted both the substantial evidence and abuse of discretion standards of review. [Citations.] In evaluating the juvenile court’s determination as to the factual issue of the existence of a beneficial parental relationship, these courts review for substantial evidence. [Citations.] But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. [Citations.]” (*Noah G.*, *supra*, 247 Cal.App.4th at pp. 1300–1301.) In this case, there was no error under any of these standards of review.

We agree with the juvenile court’s assessment that the evidence was insufficient to show a beneficial parental relationship that outweighs the well-being P.Z. would gain from adoption. There is no indication in the record that P.Z. was particularly bonded to Mother or has ever recognized her as a parent. Mother has spent relatively little time with P.Z. over the course of his life.<sup>4</sup> P.Z. was detained shortly after his birth and while still hospitalized, meaning he has essentially lived his entire life out of Mother’s custody and care. Although Mother regularly visited P.Z. while he was placed with paternal grandparents, the total time spent with him amounted to no more than nine hours per week.

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<sup>4</sup> Mother contends she has an “emotionally significant relationship” with P.Z., illustrated by the fact that he cried at the end of visits. Mother, however, fails to point to any evidentiary support for this assertion. Instead, it appears to be based entirely on Mother’s counsel’s statements at the hearing, which are not evidence. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 413–414, fn. 11 [“It is axiomatic that the unsworn statements of counsel are not evidence.”].)

More importantly, there is a dearth of evidence that Mother assumed a parental role in P.Z.'s life. The record shows only that Mother was loving and interacted well with P.Z., behaved "appropriately" during visits, and would play, read, and sing to him. Although this suggests Mother's interaction with P.Z. was positive, it points more towards a "friendly visitor" relationship than a parental one. (See *Casey D.*, *supra*, 70 Cal.App.4th at p. 51 [parent must "establish a parental, rather than caretaker or friendly visitor relationship with the child"].) Consistent with such a relationship, the record shows Mother declined other opportunities to participate in P.Z.'s life in a parental role. For example, she attended only a handful of P.Z.'s massage therapy sessions and made little effort to attend P.Z.'s other appointments.

Mother acknowledges the lack of evidence showing she assumed a parental role during her visits with P.Z. Nonetheless, she contends "it is hard to imagine" that during her visits she "was not also feeding [P.Z.], changing him, and taking on a parental role during the time she was allowed to spend with him." We disagree that the record before us would support such factual inferences.<sup>5</sup> We note that each of Mother's visits was of relatively short duration, lasting no more than three hours. Moreover, Mother failed to progress beyond monitored visitation, which occurred in paternal grandparents' home. As a result,

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<sup>5</sup> On appeal, Mother suggests the limited record is the result of DCFS "choosing" not to report more fully on what occurred during her visits. Yet, it was Mother who bore the burden of proving the beneficial parent-child relationship applied. The only evidence Mother offered at the hearing was attendance sheets showing her participation in Alcoholics Anonymous.



Mother was never in a situation in which she was alone with P.Z. and solely responsible for his care.

Finally, there is no evidence that Mother's relationship with P.Z. promoted his well-being in any significant way, or to such an extent that terminating the relationship would greatly harm him. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) This is not the extraordinary case where the preservation of the parent's rights prevails over the Legislature's preference for adoptive placement. "[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child's need for a parent. It would make no sense to forego adoption in order to preserve parental rights in the absence of a real parental relationship." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

#### **DISPOSITION**

The order is affirmed.

ADAMS, J.\*

We concur:

GRIMES, Acting P. J.

STRATTON, 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.